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SOCIALIST STATES AND GATT

by

GANG WU

Thesis submitted to the School of
Graduate Studies of the University
of Ottawa in partial fulfilment of
the requirements for the degree of
Master of Law (LL.M.)



Gang Wu, Ottawa, Canada, 1991



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ISBN 0-315-75028-6

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UNIVERSITÉ D'OTTAWA
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DEDICATION

To Qiangqiang and Huihui who had to put up with a lot during the preparation of this thesis.

ABSTRACT

As a multilateral trade organization, GATT was established without the participation of socialist states. It was virtually based on American economic policy of post war and reflected the American practice in world trade. The U.S. maintained that trade control should be accomplished almost entirely through tariffs, that all tariffs should be substantially reduced through international negotiations. For this purpose, a comprehensive international agreement should be codified to prohibit all non-tariff barriers. The right of individual governments to control the flow of private trade should be flated within the framework of the Agreement. Within this framework of world trade, all nations should be provided with non-limited discriminatory access to markets, supplies and investment opportunities. The draft of the General Agreement was greatly influenced by the trade agreements signed by the U.S. and the U.S. Suggested Charter for LTD.

Initially the Soviet Union and the East European countries opposed the principle of multilateral trade and did not accept its institution. They were concerned that the American plan for post-war economic relations and for promotion of free trade and better investment opportunities would be a threat to the socialist system and their industrialization. However their attitudes towards GATT changed with international and domestic situations. From the mid 1950's their position on multilateralism was different. They began to gradually accept the principle of multilateralism and insisted on developing trade relations with the West on the basis of non-discrimination. As a pole of world politics and economy, socialist states considered themselves politically and economically strong enough to participate in the multilateral trading system. At the same time they also realized that it was necessary to develop trade relations with the Western industrialized countries in order to accelerate their own industrialization.

The purpose of the socialist states' participation in world trade systems was to expand trade with Western countries by elimination of discriminatory treatment imposed by the West. The attitude of the Western countries was more political than economical. They followed the principles of U.S. commercial policy and expected to use GATT as a device to sway some of the East European systems towards decentralization.

Although China is an original member of GATT, the new government had not been able to participate in GATT activities and had been kept away from the multilateral trade system ever since

its inception. It had been subject to the constraints of a special Western trade control policy, which facilitated the formation of the highly centralized economic system in China.

GATT is based on the doctrine of free market economy and designed for trade essentially conducted by private enterprises. The application of GATT principles and rules to the state trading system seems to cause problems. The General Agreement does not give any explicit definition to "state trading". There is no commonly accepted definition for the term either. Only some functional descriptions are available in regard to state trading. The principle of non-discrimination, corner stone for GATT system, was originated in GATT from the acceptance of an economic philosophy and a legal fiction that necessarily excludes any idea of turning world trade into a specific instrument for expanding trade with socialist states. Reciprocity is another important principle of GATT. It is an exchange of concessions during commercial negotiations. But it is quite problematic what type of reciprocity is appropriate for expansion of East-West trade. Based on the principle of reciprocity, tariff concessions are the central obligations of GATT. Although the tariff principle has worked well within the framework of enterprise system, the tariff concessions as an admission ticket for socialist states to accede to GATT may cause some difficulties considering the plan target in their systems. GATT provisions on state trading deal only with the application of the non-discriminatory principle to state trading in market economies. It would be very difficult to apply it to the state trading countries with highly centralized economic systems. However, due to GATT's flexibility and pragmatism, as well as its consultation and transparency systems, GATT has played an important role in developing new international rules for world trade relations in the changed world situations. They have showed a considerable degree of flexibility as far as the establishment of obligations between socialist states and the cps is concerned.

The cornerstone of classic socialist theory on foreign trade is that the state must have an absolute monopoly in order to protect the national economy. All foreign trade operations are conducted by the specialized state trade corporations under the control of the MFT in accordance with the foreign trade plan. Enterprises do not involve directly in the transactions. All domestic prices are determined by the national plans without reference to the costs of imports and exports and the foreign trade units have little discretion. The producer is isolated from the foreign consumer. Socialist economies are of the features of state trading which are hardly compatible with the GATT system. However, there is a reform trend in some socialist states. The reform has made their system closer to that of GATT.

Since the mid 1950's there has been a heated argument between the East and the West regarding the application of the MFN clause. Western countries argued that the clause applied only to tariff treatment within the framework of similar economic systems and not to the prohibition of discriminatory treatment under quantitative restrictions. Socialist states, on the other hand, insisted that the clause be applied to both tariffs and all forms of trade restrictions. With respect to the application of the non-discriminatory principle to East-West trade, the two different economies had contradictory opinions. They had different approaches over the nature of the non-discriminatory principle. Socialist states believed that it was a juridical expression of the principle of sovereign equality in the field of trade, but the West contended that it was not yet established as a new standard in customary international law.

There are six socialist member states in GATT. They are Czechoslovakia, Yugoslavia, Poland, Romania, Hungary and Cuba. Among them, Czechoslovakia and Cuba were not a planned economy when they became a cp. Yugoslavia acceded to GATT on the same conditions with market economies. The other three joined GATT under exceptional terms and conditions. The first exception is import commitment. Poland undertook to increase the total value of its imports from the cps by not less than seven per cent per annum. Romania had a similar undertaking to that of Poland. Unlike Poland and Romania, Hungary acceded to GATT on the basis of tariff reduction. However it did undertake the obligation to increase imports from the cps. Second, discriminatory quantitative restrictions. The cps imposed discriminatory qrs upon all the three socialist countries. The cps were concerned about the possibility that socialist states would disrupt their markets by exporting large quantities of low-price products by virtue of some measures peculiar to the socialist economic system. Although it was provided in three accession protocols that the discriminatory element is not increased and progressively relaxed and finally eliminated, the provisions were so vague and controversial that each side was left with the right to maintain its own interpretation. While some Western countries still insist on maintaining discriminatory qrs for a long time, socialist states have no effective instrument to push their demands for elimination of them under the GATT system. Third, special safeguard clause. The accession protocols of Poland, Romania and Hungary each provide that the cps could selectively apply to safeguard measures for such time as necessary to prevent or remedy injury if imports from the three countries exceeded the adjustment capacities of the domestic producers and if bilateral consultations reached no agreement between the two parties.

Since 1980 China has been considering the pros and cons of GATT membership. A step by step approach has been followed by the Chinese government in seeking to obtain its membership. Although China is an original member of GATT the new government of the PRC has not participated in GATT activities for thirty years. A completely different economic system was established in China. Under this system, imports and exports were the exclusive domain of state owned institutions. Government monopolized foreign trade through these operational institutions. They were responsible for drafting and executing foreign trade plan. The imports and exports were governed by the state plans and policies, rather than by the price and quality of commodities. Tariff did not play a major role in controlling imports and exports, since there was no necessary connection between external and domestic prices. Therefore, reduction or elimination of tariffs would not increase imports, nor would such changes necessarily bring about increased market access for foreign products. Under this highly centralized economy, it would be very difficult, if not impossible, for China to obtain GATT membership.

At present, China maintains bilateral agreements with 103 countries and regions. China's foreign trade is conducted principally through bilateral trade agreements, comprising mainly trade agreements with planned economies and the cps. Trade conducted under the former category is subject to volume plan targets. The particular character of their kind of trade poses the question of discrimination not only between China and other planned economies but also between China and the cps. Under the trade agreements with the cps, China has like other planned economies, suffered from discriminatory qrs. While most of the trade agreements include the MFN clauses, they often demonstrate provisions which are at variance with either the spirit or letters of GATT. Moreover, China has been denied the GSP treatment by the U.S. government. Bilateralism is inconsistent with the principles of GATT.

China is undergoing a dramatic change in its economic systems. The totally mandatory foreign trade planning has been replaced by mandataory planning, guidance planning and adjustment through market forces. Consequently, the central plan is no longer in a position to completely control foreign trade. The reform in foreign trade organization has reduced greatly the over-centralization and over-administration of the foreign trade departments and enterprises of industrial production and local governments of various levels are allowed to engage in export and/or import instead of the centralized management by national foreign trade corporations, under the former MFT. Further, producers and end-users are to be closely involved in export and import decisions. Administrative criteria is to be replaced by

economic ones. It is therefore less likely for the few highly centralized trade corporations to exert monopoly and monopsony power on the domestic market. This reform has made China's trade system closer to that of GATT.

The reform of foreign trade control measures indicates that China has made a step further to the market orientated economy. China's licencing system is neither country nor commodity specific, although the import of some commodities under mandatory plan is subject to restrictions in total value. Therefore, it is generally consistent with GATT provisions. Tariffs are not yet effective instruments of trade control in the sense of GATT. But they are playing an important role in China's trade control. At least they are not used as instruments of discrimination. With the progress of reform, China's tariff will play a genuine role in China's foreign trade. China has implemented the system of centralized control over its foreign exchange receipts and payments. The RMB is non-convertible and its exchange rate is fixed. However, the system of foreign exchange control is transparent and non-discriminatory and therefore consistent with GATT rules. As a developing country, China's control over its foreign exchange is also in line with the provisions of GATT. It is true that state prices do not reflect market situations, nevertheless, there are only 28 commodities, subject to state price. For a greater number of other products, prices are set by enterprises or relevant agencies in the light of market situations. Therefore, China's foreign trade system could be considered to a great degree to be based in free price formation and the existence of a direct link between domestic and foreign prices. Subsidies are used in China's foreign trade. However, application of the subsidies conforms for the most part with the provisions of GATT. In China there are various forms of enterprises such as individual enterprises, collective enterprises, wholly foreign owned enterprises, joint ventures using Chinese and foreign capitals. Market oriented systems are being operated in the coastal regions and SEZ's

By seeking GATT membership, China hopes to eliminate various kinds of discriminatory quantitative restrictions, to enjoy the MFN treatment of GATT to play a major role in world trade, to learn how to do business in multilateral trade system and to protect its interest through GATT systems. China's position towards GATT membership is resumption, not accession. It wants to become a member on the basis of tariff concession and to enjoy GSP treatment. However, China's requests may raise legal and economic problems. The cps may insist that China enter GATT under Article XXXIII so as to strengthen their bargaining power. They may also request China to undertake additional obligations other than tariff concessions such as import commitment, special safeguard clauses etc. China's request for GSP treatment may also meet problems with the U.S. It is clear that the negotiations will become harder as it goes on.

ACKNOWLEDGEMENTS

My gratitude first goes to the K.C. Wong Education Foundation Ltd. that has sponsored my studies in the University of Ottawa.

My special thanks, also, goes to Prof. France Morrisette who directed my studies and gave me valuable advice both on the substance of the thesis and the manner of its presentation.

ABBREVIATIONS

BTN	Brussels Tariff Nomenclature
CCP	Chinese Communist Party
CCPIT	China Committee for the Promotion of International Trade
Chincom	China Committee
CICT	Consolidated Industrial and Commercial Tax
c.i.f.	cost, insurance and freight
CITIC	China International Trust and Investment
CMEA	Council for Mutual Economic Aid; also referred to as COMECON
COCOM	Coordinating Committee
cp	contracting party
CTD	Common Terms for Delivery
ECE	Economic Commission for Europe
ECOSOC	United Nations Economic and Social Council
EEC	European Economic Community
f.o.b.	free-on-board
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
IMF	International Monetary Fund
ITO	International Trade Organization
ME	Market Economy
MFA	Multi-lateral Fibre Agreement
MFN	most-favoured-nation clause
MFT	Ministry of Foreign Trade
MOFERT	Ministry of Foreign Economic Relations and Trade
NEM	New Economic Mechanism
NFTCs	National Foreign Trade Corporations
NMEs	Non-Market Economies
NPC	National People's Congress
P.R.C.	People's Republic of China
Prof.	Professor
QRs	quantitative restrictions
RMB	Ren Ming Bi (Chinese money)
SEZs	Special Economic Zones
SFTC	State Foreign Trade Corporations
SGAEC	State General Administration of Exchange Control
U.N.	United Nations
USSR	Union of Soviet Socialist Republics

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SOCIALIST STATES AND GATT

I. INTRODUCTION

There are many reasons for a study of the issue of socialist states' participation in GATT. First, socialist states are becoming increasingly active in world trade. The trade of socialist states amounts to at least one quarter of the entire world trade.¹ Second, socialist states are carrying out a campaign of reform aiming at decentralizing economy and granting greater economic autonomy to enterprises.² Such a reform has promoted trade relations between market economies (ME)³ and planned economies,⁴ thereby facilitating a stronger economic tie between free market countries and centrally planned countries.⁵ Third, there is an urgency in such a study because both China and the USSR, the two biggest socialist states, have shown a keen interest in joining GATT.⁶

East-West trade relations have been widely discussed by jurists and economists. However, state trading countries' access to GATT⁷ calls for a renewed analysis within the context of the General Agreement, if the increased integration of socialist countries is to be a mutually beneficial reality.⁸ This research intends to set forth some ideas on the topic with a comprehensive analysis. Yugoslavia, Poland, Romania and Hungary acceded to GATT in 1966, 1967, 1971 and 1973 respectively. The participation of those socialist states in GATT set up a milestone in the history of East-West trade relations. However, the meaningful integration of socialist states into GATT needs innovative ideas to work out the following substantive problems: market access to the planned economics for goods from GATT members, the so-called entrance fee issue; a meaningful reciprocity forum for exchange of concerns between members and

planned economy; discriminatory quantitative restrictions; special safeguard clauses; the applicability of existing dumping and countervailing duty rules; and the need for an improved mechanism with socialist states for periodic review, consultations etc.

The experience of GATT so far indicates that these issues have not been adequately dealt with. China and USSR's requests for GATT membership compel a comprehensive study of these problems under new circumstances. Several years of experience of GATT with socialist states provided such a possibility.

The study starts with a review of the historical background of GATT. Special attention is paid to the different positions of socialist states and the GATT contracting parties (cps) towards GATT as a world trade organization. What are the characteristics and features of state trading in general and the state trading system in planned economies in particular? These problems, together with an analysis of the technicalities of GATT mechanisms with respect to state trading countries are the third part of this study. The perceptions of socialist states and the cps of the MFN Clause, the applicability of the clause to East-West trade in the GATT system, and the preliminary experience of GATT with the East European states are discussed in Part 4.

The issue of China's GATT membership accounts for the largest part of this research. Part 5 discusses the essential features of China's traditional system of state trading in order to show its incompatibility with the GATT system; presents the recent reforms in China's economic system with a purpose of indicating its consonance with GATT principles; analyzes legal and economic issues raised by China's request and proposes possible solutions.

The research focuses on the comparison and analysis of the centrally planned economic system of socialist states and the

free market economic system of GATT. The study concludes by pointing out that a meaningful integration of socialist states into GATT would be very difficult unless socialist states have fundamentally reformed their economic system and made the cps feel sure that socialist states are able to fulfill their obligations under GATT.

II. FOUNDING OF GATT AND SOCIALIST STATES

In order to have a better understanding of the difficulties and complexities of the socialist states' integration with GATT, it is necessary to have a general review of GATT history, especially its origin and rationale.

As a multilateral trade organization, GATT was established without the participation of socialist states. It was virtually based on American economic policy of post-war, and, to a great extent, reflected the American practice in international trade. The Soviet Union and the East European countries' attitude towards GATT changed with international and domestic situations. Initially, they were opposed to the principle of multilateral trade and did not accept its institutions. In the mid-1950s, however, their position towards multilateralism was different. By the 1960s they accepted the principle and insisted on developing trade relations with the West on the basis of non-discrimination.⁹ The western policy on trade with the East was greatly determined by political considerations in the early post-war period.

Although China is an original member of GATT, the new government had not been able to participate in GATT activities and

had been kept away from the multilateral trade system ever since its inception. It had been subject to the constraints of a special western trade control policy.

A. Controversy On Multilateral Trade System

1. Historical Preliminaries

a. Foundation of GATT--Product of American Trade Policy

The foundation of GATT was closely related to the trade practice of the United States. This was recognized at the preparatory conferences where debate initially concentrated on the proposals of the United States.¹⁰ Before and during World War II from 1934 to 1945, the U.S. government had negotiated and accepted thirty-two reciprocal trade agreements in accordance with the Reciprocal Trade Agreement Act of 1934.¹¹ These agreements are so influential over GATT that almost all the clauses borrowed, copied by and in GATT can be traced to one or another of the clauses contained in these agreements.¹²

Due to the weakness of the bilateral approach in regulating international trade,¹³ American policy makers pursued a multilateral method. Multilateralism was one of the six fundamental principles of the U.S. trade policies.¹⁴ In late 1945, the U.S. Department of State invited a number of other nations to enter into multinational negotiations for the reduction of tariffs. At the first U.N. Economic and Social Council held in February 1946, the U.S. government introduced a resolution,

calling for the convening of a "United Nations Conference on Trade and Employment" with the purpose of drafting a charter for an international trade organization.¹⁵

As we all know, the "Suggested Charter for an International Trade Organization of the U.N." was drafted by the U.S. just before the Preparatory Committee convened.¹⁶ This Suggested Charter formed the basis for negotiations towards the Charter of International Trade Organization (ITO) which was to be concluded at the Havana Conference during the early part of 1948. At the same time with the tariff negotiations and the work on the "Havana Charter", GATT was drafted at the Geneva Conference. Four conferences were held in 1946 through 1948 for these efforts.¹⁷

The basic idea of GATT was that it would be an agreement to embody the results of the tariff negotiations. None of the countries participating in the drafting of the General Agreement intended to make GATT the central international trade institution.¹⁸ However, GATT was intended to be a subsidiary agreement under the ITO Charter, upon which, as well as upon the ITO Secretariat for servicing and enforcement.¹⁹ It was considered that most of the general clauses of GATT could be drawn from comparable clauses drafted for the ITO and was understood that most of these GATT clauses would be changed to conform to the corresponding version of the ITO Charter that emerged from the later Havana Conference.²⁰

The initiative for an agreement came from the U.S. Ironically however, the U.S. government did not accept the ITO, when the Havana Conference in early 1948 completed the draft of the ITO Charter. The reason for this rejection was

explained as that by the late 1940s the aura of international cooperation that prevailed immediately after World War II had faded, and the composition of the United States Congress had shifted to a stance less liberal on trade matters and less internationally oriented.²¹ Considering the economic position of the U.S. in the post-war world, the disapproval of the U.S. Congress of the ITO Charter could only mean the death of ITO.

The death of ITO, however, made GATT the central organization for coordinating national policies on international trade. But GATT itself has not been ratified since. Instead, a "Protocol of Provisional Application" was signed in late 1946 by the twenty-three original members of GATT and this protocol became effective on January 1, 1948. It is only through this protocol that GATT is applied. Originally it was intended that after the ITO Charter came into force, the Protocol of Provisional Application would fall by the wayside, and GATT would be applied definitively.

That GATT is the reflection of the economic policies of the U.S. in the post-war period can be proved by the following facts.²² Ever since the ending of World War II, the U.S. has consistently worked for the goals of free, non-discriminatory trade. It has maintained that, in general, control of trade would be accomplished almost entirely through tariffs; that all tariffs should be substantially reduced through international negotiations.²³ GATT contains most of the provisions on commercial policy advocated by the U.S. government in the 1940s.²⁴ Therefore, it is correct to say that GATT is, to a great extent, a direct expression of U.S. views on the international organization.

In order to achieve these goals, a comprehensive international agreement should be codified to prohibit all non-tariff barriers. The right of individual governments to control the flow of private trade should be flatly limited within the framework of the agreement. According to the trade agreement governing world trade, there should be an international body whose role would be to interpret, to enforce the agreement. In the view point of the U.S., the international trade agreement should be a legal code which would lay down the law, and the contracting parties would be law-abiding²⁵.

b. Attitude Of Socialist States Towards Multilateral World Trade

However, the weakness of the U.S. plan lays not only in its code-of-law approach and failure to provide an institutional framework for the implementation of the Agreement,²⁶ but also in the failure to attract the Soviet Union and other socialist states to participate in GATT in the post-war period. At first, the USSR had taken an active part in the Bretton Woods Conference before the creation of the International Monetary Fund (IMF) and the World Bank.²⁷ Also, it had given support to the western proposal to create an organization for international trade cooperation. But finally the Soviet Union gave no serious consideration to the proposals for multilateral negotiations and presented no project on the matter, though it had initially been interested in international conferences concerned with these economic matters. Professor Kostecki argued that the American Suggested Charter had taken into account the Soviet participation in the multilateral trading system by including some provisions directly relevant to the Soviet monopoly of foreign trade.²⁸ It seemed to him that these provisions were tolerant towards the

Soviet economic centralism considering American insistence on free trade.²⁹ The highly centralized monopoly of foreign trade in the Soviet Union was taken for granted so as to offer technical arrangements within which the policy of that monopoly would be in accord with the principles of the Suggested Charter.³⁰

The Soviets, however, refused to accept the Bretton Woods Agreement despite repeated invitations from the western countries. The Soviet delegation first disappeared from the London Conference, on the excuse of lack of time to study the western proposals under discussion. Then, the Soviets absented themselves from the Havana Conference and the Geneva negotiations which formulated the Havana Charter and GATT.³¹

Since it was then the only state trading country, the Soviet Union's absence made impossible any constructive discussion of the place of state-trading monopolies in the international trading system. As commented by Professor Kostecki, it was an obvious omission for a conference aiming to establish effective trade relations among nations.³²

Unlike the Suggested Charter, the Havana Charter made no specific provisions accommodating a "complete state monopoly" to an international and essentially liberal trade order. However, the negotiators of the Havana Conference had agreed that specific rules referring to complete state monopoly of foreign trade were to be introduced once an opportunity for negotiations with a country maintaining such a monopoly should occur.³³ Moreover, the text of the Havana Charter was supposed to be sufficiently flexible to enable the eventual participation of the Soviet Union in the ITO. Then what were the considerations for the Soviet Union, and later, other socialist states to stay away from the International Trade Agreement?

Politically speaking, in the late 1940s, the Soviet Union suspected that the real purpose of the U.S. in planning a post-war trade legal framework was to establish the U.S. economic and political domination over the world.³⁴ The principles of non-discrimination and multilateral trade, the removal of limitations on trade tariff barriers and quotas, and the free flow of trade, etc., were, in the eyes of the Soviets, American strategies in designing for a Pan Americanism.³⁵ The Russians were afraid that socialist participation in the multinational trade system might lead the U.S. to further expand its sphere of influence.³⁶

Furthermore, the Soviet Union believed that there would be economic crises in the post-war western world.³⁷ Based on this assessment of the situation, the Soviets preferred to postpone fixing terms of trade with the west and expected that western countries, due to unemployment and overproduction, would become more willing to accept the demands for favourable loans and suppliers.

Economically speaking, the Soviet Union preferred bilateralism to multilateralism as a more advantageous form of trading. Facing countries competing with each other for the huge market of the Soviet Union, the Soviets might be able to conduct favourable bargains with individual countries, to conclude barter and clearing agreements and to secure special advantages in the terms of trade, etc.³⁸ Participation in GATT would definitely make this objective more difficult.

On the other hand, the Russians believed that one of American objectives in advocating freer trade was to occupy the

markets of developing countries.³⁹ It was also thought that the multilateral trade system, as envisaged in GATT, was disadvantageous to small and intermediate traders. Socialist states believed that protection was indispensable for their industrialization, which was believed to be an absolute prerequisite to prevent western domination. Therefore, there was not much advantage to participating in such a system.

Theoretically speaking, there existed certain contradictions between the concept of non-discrimination and the socialist planning methods in the foreign trade sector. In the opinion of centrally planned countries, formal application of non-discrimination in an economically quite unbalanced world could only result in the economic and political dependence of the weaker one on the stronger one. According to their point of view, a different interpretation should be given to the term of non-discrimination from that expressed in GATT. Non-discrimination should not restrain a country from determining the form of its economic relations in its own best interest.⁴⁰ They maintained that any unilateral action introduced for non-economic reasons, such as the American embargo on exports to socialist states, should be considered a discriminatory trade practice.⁴¹ They argued that bilateralism did not conflict with their understanding of non-discrimination. They contended that bilateralism could prove advantageous to poor nations seeking equitable distribution of gains from trade and better access to the supply of industrial equipment and that bilateralism could turn out to be an effective weapon for countries which, though poor, were important exporters of certain raw materials in great demand on the world market.⁴²

2. Trade Between Market Economies And Planned Economies

a. Change Of Attitudes

By the mid-1950s, however, there emerged a fundamental change in the world situation.⁴³ The bipolar structure of world relations had been established. Participation in a multilateral trading system no longer seemed a direct threat to socialist industrialization, but rather a necessary method for the continued development of world trade.⁴⁴ Centrally planned economies came to realize that an international trade system advocating freer trade, non-discrimination and multilateralism would not necessarily be against their interests. They expected that their conversion to non-discrimination and multilateralism would considerably loosen the controls regulating the export of strategic goods to socialist states and reduce discrimination against products from socialist states on western markets. It was based on the understanding of Leninist theory of peaceful coexistence, i.e., since socialism prevailed first of all only in some, not all countries, there must be a necessity for a period of coexistence between countries with a socialist system and those with a capitalist system.

At the same time, socialist states were more concerned with the economic objective of developing the technology-intensive industries and raising the standard of living. In the foreign trade sector, progressive decentralization and the adoption of more objective criteria for foreign trade efficiency made socialist states more conscious of discriminatory tariffs and the other obstacles to their exports to the western markets. From the mid-1950s on, socialist states, mainly the Soviet Union and Eastern European countries, began to pursue a long-term

policy for expanding their trade to the developed market countries. The improved trade relations between the centrally planned economies and the free market economies were supposed to offer socialist states a better access to western technology and an important source of investment and consumer goods.⁴⁵

In 1955, the Soviet Union appealed to the ECOSOC for ratification of the Havana Charter and creation of the International Trade Organization based on the provisions of this Charter.⁴⁶ It was apparent that the Soviet Union considered that the creation of the ITO, rather than accession to GATT was more advantageous to socialist states.⁴⁷ In its opinion, the ratification of the Havana Charter by the U.N. members was the only realistic way of establishing healthy conditions for international trade. It is true that GATT members, at that time, were merely limited to developed western countries critical to the Soviet Union, while the ITO's membership was expected to be much more universal. Unlike GATT, the ITO was regarded as a United Nations' organization. Therefore, it would be greatly dependent upon the U.N.'s political organs.⁴⁸ Moreover, the Havana Charter, as distinguished from GATT, contained certain concrete provisions on state trading system. It was obvious that participation in an organization that had included a general provision for state trading countries was preferable to participation in GATT which adopted no solution for the accession of socialist states and would make special arrangements on an individual basis.

However, western countries considered the Havana Charter a dead letter and refused to continue discussing on the issue.⁴⁹ They even rejected the application of the non-discriminatory principle, advocated by themselves,⁵⁰ to the trade between the centrally planned economies and the free market economies.⁵¹

Since the late 1950s, after the failure of the efforts for the creation of a comprehensive trade organization and the development of trade between the state trading countries and the free market economies, some centrally planned economies turned to GATT to seek a traders' forum and commonly accepted code of conduct.

b. Motivations Of Socialist States.

Indeed, the motives of socialist states for participation in GATT were purely practical. From the mid-1950s onwards, as Professor Kostecki pointed out, the trade between the centrally planned economies and western countries enjoyed a high rate of growth. It increased faster than overall world trade, faster than trade between socialist states themselves and faster, too, than trade among the industrialized nations.⁵² However, the relative importance of the trade was very low. Trade between ME and the planned economies in 1955 accounted for 1.5 per cent of total world trade; and by 1970, that share had increased only to 2 percent.⁵³ In order to further develop trade relations with the western world, socialist countries became interested in an international trade arrangement. Yet, western discrimination against trade with socialist states, especially discriminatory customs tariffs, quantitative restrictions and strategic embargos,⁵⁴ restricted the development of the trade.⁵⁵ The non-discriminatory treatment, as previously mentioned, was their chief concern in making applications to GATT.⁵⁶ Some socialist states did not enjoy non-discriminatory treatment on western markets.⁵⁷ The treatment granted by the west to socialist states was less extensive than the one in the General Agreement.

The former covers mostly tariffs, while the latter includes tariffs as well as quantitative restrictions and some other matters.⁵⁸

Another important problem was that non-discriminatory treatment enjoyed by some socialist states in the market economies was much less stable⁵⁹ in the sense that its formal application expired with the validity of a particular bilateral arrangement,⁶⁰ that it could be withdrawn any time in cases where it had been granted unilaterally or applied only de facto.⁶¹ and that tariff concessions accorded on the basis of bilateral arrangement could be more easily suspended than on the basis of GATT.⁶²

Furthermore, socialist states expected to solve through GATT the problem of western discrimination against their exports by means of discriminatory measures, especially in the areas of discriminatory customs tariffs, quantitative restrictions and strategic embargos.⁶³ For instance, US exposed higher import duties on Russian vodka or Bulgarian tobacco. Goods, notably agricultural products, were subject to quantitative restrictions or licensing. Such measures were also taken against socialist states by many western European countries.

c Attitude Of West

Politically speaking, the attitude of the contracting parties of GATT was positive. In their viewpoint, enlarging trade with socialist states would facilitate modifying a centrally planned system and supporting some of those socialist countries to increase their relative independence within the Eastern bloc.⁶⁴ Economically speaking, participation of socialist states in the

GATT Agreement would also bring commercial advantages to the cps, since GATT could provide a framework for negotiation with socialist states, and thus, could open huge markets for western products.⁶⁵

It was not sufficient to have political and economic desirability of improvement in East-West relations within GATT. A meaningful technical arrangement must be found so as to integrate socialist states into the GATT system.

Opinions were varied about this technical arrangement. Some were of the opinion that no such arrangement could be worked out because "State trading is political as well as economic in nature and GATT's attempt to accommodate state trading enterprises within its framework involved an unresolvable conflict between depolitization and state trading's inherent political dimension".⁶⁶

According to others, effective trade cooperation between socialist states and GATT members could be based exclusively on a bilateral arrangement within GATT. Still others, such as Professor Kostecki, believed that divergence in economic systems between east and west did not constitute an insurmountable difficulty.⁶⁷ They were convinced that meaningful institutional arrangements for east-west trade could be worked out in GATT given a necessary minimum of the will to cooperate.⁶⁸

The attitude of GATT regarding expansion of trade with socialist states was, as GATT had always been, purely pragmatic.⁶⁹ It took the approach of gradualism and realism.⁷⁰ Under the formula taken by GATT with respect to the integration of socialist states into the world trade organization, non-discriminatory treatment was promised alongside with parallel

undertakings regarding quantitative trade targets and other desiderata.⁷¹

In other words, the integration of the state trading system into GATT was taken as an exception to the non-discriminatory principle.⁷² Traditionally, when a country joins GATT, it receives, on the basis of the non-discriminatory principle, market access benefits of tariff concessions previously negotiated among other cps. In return, the acceding country offers "equivalent" tariff concessions of its own. In the case of accession by socialist states, they made special concessions for the benefit of tariff reduction made by the cps. This will be examined later in detail.

B. China And GATT In Early Post-War Period

1. China As An Original Member Of GATT

China is a signatory to the Havana Charter, namely, the Final Act of the U.N. Conference on Trade and Employment. It is not only a member of the Interim Commission for the International Trade Organization,⁷³ in charge of implementation of the Havana Charter, but also a member of the Executive Committee responsible for supervising the negotiations of the General Agreement on Tariffs and Trade. In a strictly legal sense, the operation of the General Agreement on Tariffs and Trade is still under the supervision of the Interim Commission for the International Trade Organization. In this capacity, therefore, Chinese representatives actually participated in the decision to appoint a new Director General of GATT in 1980.

China is also one of the twenty-three countries which signed the General Agreement on Tariffs and Trade on 21 April, 1948 and accepted the First Protocol of Rectification of the General Agreement on 7 May, 1948, the Second Protocol of Rectification on 14 September, 1948 and the Third Protocol of Rectification on 13, August, 1949.⁷⁴

On October 1, 1949, the government changed in China as a result of the founding of the People's Republic of China. Exceptional circumstances⁷⁵ prevented the new government from assuming its seat in the U.N. and likewise its status as a cp in GATT. The deposed regime occupied the seat in GATT until 6 March 1950 when it notified the U.N. Secretary General of its decision to withdraw from the General Agreement. However, the Chinese government has never recognized the validity of the withdrawal. It considers the notification to the U.N. Secretary General as from persons unauthorized.⁷⁶

2. China's Trade Relations With West

Even before the Chinese Communists took power, Chairman Mao Tse-tung had expressed the willingness to cooperate with the West, particularly with the U.S. in the future economic reconstruction in the following statement:

China's greatest post-war need is economic development. She lacks the capitalistic foundation necessary to carry this out alone. Her own living standards are so low that they cannot be further depressed to provide the needed capital.

America and China complement each other economically, they will not compete. China does not have the requirements of heavy industry of major size. She cannot hope to meet the United States in highly specialized manufactures. America needs an export market for her heavy industry and these specialized

manufactures. She also needs an outlet for capital investment.

China needs to build up light industries to supply her own market and raise the living standards of her own people. Eventually she can supply these goods to other countries in the Far East. To help pay for this foreign trade and investment, she has raw materials and agricultural products.

America is not only the most suitable country to assist this economic development of China: she is also the only country fully able to participate. For all these reasons there must not and cannot be any conflict, estrangement or misunderstanding between the Chinese people and America...

Neither the farmer nor the Chinese people as a whole are ready for socialism. They will not be ready for a long time to come. It will be necessary to go through a long period of private enterprise, democratically regulated. To talk of immediate socialism is "counter-revolutionary" because it is impractical and attempts to carry it out would be self-defeating.⁷⁷

However, China had been kept away from participating in the multilateral trading system from the beginning of the establishment of the new government despite its desire to develop trade relations with the west. Though reasons were varied, the trade control policies of western countries were, to a certain degree, responsible for China's control policy on foreign trade after the founding of the new government.⁷⁸ A trade system of monopoly was instituted. All trade was subjected to license. Imports were divided into four categories ranging from essentials to luxuries, whose purchase was prohibited. The Bank of China was given control over all dealings in foreign exchange. This system was apparently in conflict with the principles and rules of GATT.⁷⁹ These policies of the west also placed a serious constraint on the expansion of western trade with China.⁸⁰ The U.S. for a long time set the tone of western relations with China.⁸¹ Therefore, it is necessary to analyse American

policy toward trade with China in order to understand the general position of western countries towards China in the early years of GATT.⁸²

In seeking trade, particularly sources of supply with western countries, China was severely hampered by strategic trade controls. Arrangements made by the U.S. and its allies to control trade with socialist countries began to take shape in 1949. On February 26, 1949, the Congress of the U.S. passed the Export Control Act, authorizing the Executive branch to prohibit the exportation from the U.S. and the re-exportation from other countries of any articles, materials or suppliers to the extent necessary to further U.S. foreign policy or the national security. Selective trade controls were soon imposed by the Commerce Department to prevent the export of strategic goods to parts of China controlled by the Communist Party of China. In October, 1949, with the founding of the P.R.C., the list of goods requiring a validated license for export to China included articles of strategic importance such as aviation fuel and truck tires. By March, 1950, the U.S. trade controls on exports to China were equivalent to those of exports to other socialist countries.⁸³ Three international control lists were formulated at that time. The first was a total embargo list relating to arms, other implements of war, ammunition, and atomic energy materials. The second was a quantitative control list including certain types of machine tools, raw materials, and equipment. The third, a watch or surveillance list, comprising a wide variety of commodities.⁸⁴

After the breakout of the Korean War, on June 25, 1950, the U.S. embargoed all trade with China. Under the urging from the U.S., the COCOM countries⁸⁵ agreed to extend the application of the embargo list to China as well. Although

these countries agreed on joint measures, each country was free to enforce more drastic controls if it wished. The joint measures⁸⁶ provided for a complete embargo on all items appearing on any one of the above mentioned three lists and on an additional list of two hundred items. It is said that these interdictions were greatly reinforced by financial controls.⁸⁷

In October 1950, the U.S. pressed for more restrictive controls against China. The China Committee (Chincom) was finally established in September, 1952, with the task of enforcing a special and more restrictive embargo list - the CHINCOM list.⁸⁸

In August, 1954, the COCOM list was substantially liberalized, though the U.S. has maintained throughout its own, even wider de facto China differential. From 1954 to 1956, Chincom countries began to increase their exports to China under the "exceptions procedure" provided for in the agreement.⁸⁹ More and more countries became increasingly reluctant to continue enforcing a China differential in trade controls. They began to make unilateral exceptions until the China differential was finally abandoned in 1957.⁹⁰ In 1958, a new international control system was instituted and applied uniformly to all socialist countries.

The relaxation of the embargo stimulated the interests and activities of Chinese and western traders. They began to visit each other's countries in search of trading opportunities. Though at first there was not much business to be done, there were a number of western missions to China and western goods were exhibited in growing volume. More visits and further exhibitions were planned.

However, there was no great increase in trade between China and western European countries, although the strategic embargo was no longer sufficiently all embracing to hamper run of the mill trade.⁹¹ The influence of embargo still existed. There is good proof that the U.K., the Netherlands, Switzerland and the four Scandinavian countries all recognized the P.R.C. from its early days, but none of them except Britain was an important trading partner of China.

C. Summaries And Comments

GATT was a product of U.S. planning. In the view of the U.S. government, the post-war international trade system should be established in such a way as to eliminate the economic roots of friction which were believed to have been the causes of World War II.⁹² For this purpose, a stable world trade order was to be constructed. Within this framework of trade order, all nations should be provided with non-discriminatory access to markets, supplies and investment opportunities. It was said that the final adoption of GATT was based on the post-war political, economic or military hegemonism of the U.S.⁹³ The completion of GATT, as described by the Honorable W. L. Clayton, former Under-Secretary of State, "little short of a miracle",⁹⁴ considering the troubled times when the agreement was drafted.

Nevertheless, socialist states paid no serious attention to the U.S. proposal for multilateral negotiations and refused to accept the multilateral trade system and its institutions in the initial post-war period. They were concerned that American plans for post-war economic relations and for promotion of freer

trade and better investment opportunities, would lead to a threat to the socialist system and their industrialization.⁹⁵ Based on this consideration, they refused to participate in the trade system planned mostly by the government of the U.S.

By the mid-1950s, however, the attitude of socialist states towards the principle of multilateral trade had changed with the development of international and domestic situations. As a pole of world politics and economy, socialist states considered themselves politically and economically strong enough to participate in the multilateral trading system without worrying about being dominated by western countries. Furthermore, socialist states came to realize that, in order to achieve the objective of industrialization, it was necessary to develop trade relations with the western industrialized countries. It was mostly on these considerations that they favoured trade expansion with the west on the basis of the principle of multilateralism.

It is understandable that the socialist states favoured a more universal ITO based on the Havana Charter rather than GATT as a world trade institution. Due to GATT's inherent weakness in regulation of East-West trade, the socialist states did not consider it a satisfactory arrangement for multilateral trade. The western industrialized countries, however, refused to talk about the ITO any more.⁹⁶

The purpose of socialist states' participation in GATT was practical: to expand trade with western countries by elimination of discriminatory treatment imposed by the West. The attitude of the western countries, on the other hand, was more political than economical.⁹⁷ They followed the principles of

U.S. commercial policy and expected to use GATT as a device to "sway some of the East European system towards decentralization and facilitate their integration into the western economic order. In that sense GATT was originally supposed to provide an adequate framework for implementation of the U.S. commercial policy towards Eastern Europe."⁹⁸

China is an original member of GATT. The withdrawal from GATT by the deposed regime was, in the Chinese viewpoint,⁹⁹ invalid since the P.R.C. is the only representative of China. However, the new government had not participated in GATT activities ever since the establishment of the P.R.C. in October, 1949. A completely different system had been instituted since then. This factor would make China's request for resumption of a GATT seat difficult.¹⁰⁰

There may be various reasons, but the western trade control policies did play a considerable role in keeping China away from participating in the multilateral trading system. It at least facilitated the formation of the highly centralized economic system of China. Under this traditional economic system, it was impossible for China to become a member of GATT as the trade regime was so much in conflict with GATT principles and rules that no CPs would consider its application.

III. GATT And State Trading

It is generally recognized that GATT is based on the doctrine of free market economy, and designed for trade essentially conducted by private enterprises. It is difficult, therefore, for GATT to deal efficiently with the centrally planned economies and to regulate trade engaged by state owned

enterprises. The application of GATT principles and rules to a state trading system is bound to cause problems. This chapter analyses the definition and some characteristics of state trading and reviews some of GATT's leading principles and rules, such as non-discrimination, reciprocity, tariff reduction, adaptability and consultation, as well as its provisions on state trading. It also examines a state trading system from the perspective of compatibility with GATT principles and considers difficulties occurring in applying GATT to the centrally planned economies.

A. Concept of State Trading

1. Definition

There is no commonly accepted definition for the term "state trading". One commentator stated that "it is virtually impossible to give a clear-cut and meaningful definition of state trading which could please everybody".¹⁰¹ The American Suggested Charter referred to it as an enterprise over which the government exercised "directly or indirectly a substantial measure of control".¹⁰² The General Agreement did not give any explicit definition to "state trading". The GATT panel of experts, however, referred to the term either as an instrument of government which had the power to buy or sell or as a non-governmental body with such power and to which the government had granted exclusive or special privileges.¹⁰³

Some scholars have simply described the term functional due to its indefinable nature.¹⁰⁴ It was generally considered that any of the following three situations may constitute state trading:¹⁰⁵

- (a) the state owns the trading enterprises;

- (b) the state directly controls a private enterprise to the extent that its trading operations are predominantly controlled by the state, and
- (c) the trading enterprise is granted exclusive of special privileges by the state.

It is apparent that these three types of state trading decrease in degree of state control in terms of ownership and control, direct or indirect. It is also clear that state trading is a concept that has an amorphous nature.¹⁰⁶ In the words of one commentator, "state trading is an all-inclusive operation with political, economic and military overtones and undercurrents."¹⁰⁷

2. Functions And Forms

State trading may have various functions¹⁰⁸ common to socialist states and the market economy countries.¹⁰⁹

First, state trading may play a positive role in the protection of domestic production from imports, in the promotion of exports and in the stabilization of domestic prices or incomes. These are usually accomplished through the determination of either the domestic or external prices of traded goods and the quantities, imported or exported.¹¹⁰

Second, state trading may be conducted for the improvement of the terms of trade by raising export prices or lowering export or import prices or both.¹¹¹

Third, state trading may be used to improve the balance of payments by directly determining the components of the trade account.¹¹²

Fourth, for reasons of public health, state trading may be an instrument for controlling the domestic consumption of such items as alcoholic beverages, pharmaceuticals and tobacco.¹¹³

Fifth, state trading may serve fiscal objectives by, for example, shifting trade profits to the government.¹¹⁴

Sixth, state trading may have the function of protecting national security by maintaining state control over trade in arms and other items for defense.¹¹⁵

Seventh, state trading may be conducted by integrating foreign trade into central planning.¹¹⁶ This is done through plan targets determining quantities or values of produced and traded goods because central planning once introduced in domestic production tends to extend into the foreign trade.¹¹⁷

Eighth, state trading may serve as a tool to link trade with politics, which may be accomplished in two situations: (a) where government places commercial objectives above political cost, (b) where government puts political objectives above commercial cost.¹¹⁸

State trading may take a variety of forms. The most common categories of state trading practice are state monopoly over imports or exports or both.¹¹⁹ State trading may take the

form of private trade monopolies which is conferred and closely regulated by the state.¹²⁰ Another form of state trading involves central determination of prices or quantities or both.¹²¹ It was observed that those forms of state trading were interrelated in practice and were not mutually exclusive.¹²²

3. Evaluation

State trading is advantageous in many aspects.¹²³ As an instrument, state trading may utilize economic means to improve a country's relative economic, political and military position in international relations,¹²⁴ for a state trading nation enjoys two fundamental advantages over a private trading nation.¹²⁵ First, a state trading nation possesses greater economic bargaining power than its private counterpart. As a monopolist of goods both imported and exported, it has power to control price, which is considered as an important component of international bargaining power. Next, a state trader is superior to a private trader in the power and ability to translate acquired economic power into political and military influence serving the state's interests.¹²⁶ These advantages show the multi-dimensional nature of state trading and collectively enhance the state trader's position vis-a-vis the private trader in international trade.

State trading, nevertheless, is also problematic.¹²⁷ It is imperative for state trading to have a bureaucratic structure¹²⁸ which often presents some inherent problems.¹²⁹ First, there may be policy conflicts within political leadership as well as between political leadership and trading units. Second, the bureaucratic delay or contradiction may, directly or

indirectly, nullify trading benefits. State trading also has another disadvantage, i.e., instability.¹³⁰ In the absence of a bilateral agreement with a state trading nation, a trading partner cannot rely on a firm demand of importing by a state trading nation, because such demand is controlled by the state for non-economic and economic reasons rather than by free market forces.¹³¹

B. Mechanism Of GATT

1. Principles of GATT

a. Non-discrimination

Article 1, paragraph 1, of the General Agreement states that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties".

This universal most-favoured-nation clause is an embodiment of the principle of non-discrimination in GATT. The non-discriminatory principle constitutes one of the cornerstones of the General Agreement, proclaiming one of the fundamental principles on which it was intended that the post-war reconstruction of international trade should be based.¹³²

It was thought that this non-discriminatory treatment would be the most effective way to ensure equal competition in an economic framework inspired by the ideas of free trade.¹³³ The provision of the MFN clause in GATT is of an all-inclusive

character since it relates not only to customs duties and charges but also to any "advantage, favor, privilege or immunity", and is applicable to both imports and exports as well as to the international transfer of funds. In short, it is both general and specific because it not only deals with advantages relating to aspects of trade policy but also lists all of the subjects to which it refers.

It was believed that world peace would necessarily need a healthy and prosperous world economy.¹³⁴ To this end, the draftsmen of the General Agreement designed to establish an economic system based on non-discrimination and on the maximum exchange of goods and services.¹³⁵ The purpose of nondiscriminatory treatment lies mainly in the pursuit of a "fundamental equality without discrimination".¹³⁶ The clause encourages, as its aim, elimination of discrimination in international trade and thereby achieving the objective of equality of legal treatment.¹³⁷ It has been observed that "most-favoured-nation treatment transposes equality under international law into the economic field".¹³⁸ "No matter how a government regulates its foreign trade, it may not, in principle, discriminate as to the origin or destination of traded goods".¹³⁹

"The basic rationale for MFN is that if every country observes the principle, all countries will benefit in the long run through the resulting more efficient use of resources. Furthermore, if the principle is observed, there is less likelihood of trade disputes."¹⁴⁰ When the General Agreement was drafted, it was believed that all of the mistakes of the past could be rectified by liberalizing international trade and that this would

tend to the proposed goals.¹⁴¹ That is to say, under the free market conditions, trade will be expanded if the principle is accepted. However, despite these hopes, non-discrimination is subject to a number of major exceptions. Most important among these are two forms of regional integration, i.e., the customs unions and freetrading areas.¹⁴² In addition, the so-called 'grandfather clause' explicitly permits certain specified preferential arrangements under which the most important were the British Commonwealth preferences.¹⁴³ Article XIX, the so-called safeguard clause constitutes another important exception to the principle. Moreover, Article XXV provides for the waiver of GATT obligations in exceptional circumstances.¹⁴⁴ As one Chinese observer commented that there are so many exceptions to the principle of non-discrimination that exceptions tend to be principles and principles tend to be exceptions.¹⁴⁵ It is true that most of these exceptions are necessary for the conclusion of the agreement considering the conditions then. However, it is these exceptions that were so abused by the developed countries that the principal of non-discrimination principle has been greatly undermined, particularly during the Tokyo Round of Multilateral Trade Negotiations. They continued the trend away from unconditional MFN by enshrining the conditional MFN principle in the six Codes addressed to non-tariff barriers. Under the terms of these Codes, benefits are extended fully only to Code signatories. Although all GATT members are eligible to sign each Code, it is only upon signature that the member nation is assured of the full range of Code benefits.

The principle of non-discrimination however, was originated in GATT from the acceptance of an economic philosophy and a legal fiction that necessarily excludes any idea of turning international trade into a specific instrument for expanding trade with socialist states.¹⁴⁶ When the draft was under

consideration, the Soviet Union was then the only important country with a complete state monopoly of the trade system and failed to participate in the deliberation of the Preparatory Committee. This failure was taken as an indication that it would not become a member of the International Trade Organization. That is why GATT, as an international organization, has not incorporated provisions regulating trade with socialist states.¹⁴⁷

One observer stated that "{s)o much of GATT behaviour is motivated by the principle of non-discrimination that it would have to play a major role in any special arrangements made to allow the participation of state-trading systems in GATT."¹⁴⁸ However, GATT experience proves that the principle has not meaningfully applied to the centrally planned economies. A detailed discussion of the application of this principle to socialist states in GATT will be presented later.

b. Reciprocity

Reciprocity is an exchange of concessions during commercial negotiations, where every government aims at maximizing its gains from trade cooperation.¹⁴⁹ It is another important principle of GATT.¹⁵⁰ The Director-General of GATT, Mr. Oliver Long, in an interview with The Times gave the following evaluation:

The foundation-stones of GATT are the twin principles of non-discrimination and reciprocity, the most-favoured-nation principle that every country party to GATT should trade on an equal and identical basis with all other signatories. These are the principles on which the phenomenal expansion of world trade has been based during the first post-war generation.¹⁵¹

Unlike the non-discrimination principle, however, reciprocity is not expressly written as an absolute or unconditional principle in the General Agreement. Although non-discriminatory treatment is not conditional on express reciprocity by beneficiary state through the application of the treatment in GATT, the General Agreement is, in fact, based on the conception that the concessions and advantages in the course of trade negotiations under GATT must be granted to one another on the basis of reciprocity.¹⁵² It is evidenced by the words "reciprocal and mutually advantageous arrangements contained in the preamble of the General Agreement.

In addition, GATT practice in tariff negotiations has also proved that the treatment is reciprocal in nature. "Although it is not established as an express condition for the most-favoured-nation treatment", as one learned commentator observed, "the principle of reciprocity is nevertheless implicit in the system of the General Agreement, which assumes that the contracting parties will grant one another substantially equivalent advantages and rights on a reciprocal basis through commercial negotiation. Tariff negotiations until now have undoubtedly been governed by the tacit application of this principle." Thus, he concluded that "the most-favoured-nation clause has operated under Article I of the General Agreement within a system essentially based on reciprocity."¹⁵⁴

According to the practice of GATT, reciprocity has the characteristic of similarity of concessions exchanged. In other words, the exchange of concessions is of identity in nature.¹⁵⁵ This characteristic has basically relied on the emphasis of tariff protection in the GATT system. Nevertheless, with the shift of emphasis on tariff protection to non-tariff barriers, and particularly, the participation of the state

trading economies in GATT, it is quite controversial as to how the non-discriminatory principle should be applied to trade between the state-trading countries and the market economies and what type of reciprocity is appropriate for expansion of trade.¹⁵⁶ As described above, the main problem lies in the fact that foreign trade in socialist countries is conducted mainly by state enterprises and that foreign plan is an effective instrument of socialist states' commercial policies.

However the GATT system, founded on the non-discriminatory principle, applies to a situation quite different from that of socialist states. In that situation, tariffs represent the only instrument of control over the flow of trade. In this case, the presence or absence of discrimination is easily ascertainable. In the case of socialist states, the flow of trade is primarily determined by the quantitative targets specified in national plans. Tariff rates play only a secondary role.¹⁵⁷

Professor Kostecki forecast that the asymmetric formula of reciprocity, i.e., the exchange of concessions of a non-identical nature, might in the future replace the symmetric one in GATT negotiations.¹⁵⁸ It was expected that a tariff reduction might be exchanged against some kind of quantitative import commitment as in the formula adopted for relations between Poland and GATT.¹⁵⁹ But Professor Kostecki himself was not satisfied with this type of formula, because the formula would make more complex the evaluation of costs and benefits resulting from particular concessions, due to the involvement of various instruments of concession-making such as tariffs, quotas, import targets, licenses, subsidies and so on. Obviously, it is particularly difficult to calculate the balance of cost and benefits of

concession-making if the reciprocity formula is not specific and identical.

Moreover, this type of reciprocity is a confront violation of the non-discrimination principle, under which, nations automatically extend trade benefits to "like products" of other countries unless the particular country is expressly excluded from the trade benefit. While according to this type of reciprocity formula, concessions are expressly conditioned on the receipt of reciprocal benefits from individual nations.¹⁶⁰ It is only the conditional MFN that establishes a system of this reciprocity. The GATT experience with socialist states, as will be discussed later, was just based on the principle of conditional MFN.

c. Tariff Cutting

The tariff concessions are the central obligation of GATT, which draws a fundamental distinction between tariff and other forms of restrictions. Under GATT, members are expected to control trade only through tariffs. All other forms of trade restrictions are considered incompatible with the GATT system.

It is clear that the GATT system intends to reduce tariffs through tariff concessions, particularly in rounds of tariff negotiations. The consequences of each tariff negotiation are carried in the tariff schedules as an integrate part of GATT. Article II provides that "{e}ach contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in its schedule¹⁶¹ that imports to a country, from another GATT member, of products

described in its Schedule shall be "exempt from ordinary customs duties in excess of those set forth (in the schedule) and provided for therein".¹⁶² The tariff in a schedule is bound. The fundamental obligation with respect to a bound duty is of course, not to raise it beyond the level agreed upon. The concessions made in tariff negotiations between two or more than two contracting parties extend to all other contracting parties due to MFN clause. No doubt, the tariff reduction is virtually based on the principle of reciprocity.

Since GATT was adopted, there have been eight rounds of negotiations. Industrialized countries have reduced their tariff to four from ten percent of the imported value on most of industrial products.¹⁶³ It is true that the tariff on industrial products has been cut considerably between industrialized countries.

So far, to a great extent, the tariff principle of GATT has worked within the framework of the enterprise system, where a direct link between foreign and domestic prices is assumed to be in existence and therefore tariffs affect price competitiveness.¹⁶⁴ It is said that changes in tariff rates are measurable for their economic effect provided there are no direct administrative controls on enterprise activity.¹⁶⁵ Administrative measures might further influence the direction and composition of trade. However, it is quite controversial whether this principle can operate to tariffs in state trading countries. Some western scholars argued that an enterprise could not follow the state's foreign trade plan on the one hand and be at complete liberty to follow the principle of non-discrimination, the MFN clause, in its actual operation on the other.¹⁶⁶

According to socialist states, on the other hand, the desire to buy in the most price-competitive markets would eliminate the temptation to seek out politically preferable trading partners. It was contested that even given their good faith, nondiscrimination as interpreted in GATT might be impossible as long as the internal price structures of socialist states were totally insulated from world market prices such that genuine cost comparisons between alternative sources of supply were not available.¹⁶⁷ Karin Kock argued that, in analyzing relations between the state trading countries and GATT, not only the state monopoly of trade, but also the integration of foreign trade into the central plan and the mechanism for its control should be taken into consideration.¹⁶⁸ Mr. Reuland believed that discrimination might arise as much from the indirect controls built into economic planning in the socialist states as from administrative control.¹⁶⁹

In the viewpoint of Kostecki, however, the tariff requirement was not necessarily incompatible with those forms of state trading that eliminate or limit the direct link between domestic and foreign prices, because that link constituted a condition sine qua non of tariff based trade control.¹⁷⁰

It is clear at least at one point, that the tariff concession as an admission ticket for socialist states to accede to GATT may cause some difficulties considering the plan target in their systems.

2. Provisions Of GATT On State Trading

Article XVII of GATT is the central provision dealing with state trading. It is about the application of the general

non-discriminatory principle to state trading. That article imposes three types of obligation upon the state trading enterprises and their governments.

The first obligation imposed by Article XVII is of a negative duty of government, i.e., not to prevent any enterprises from acting in a non-discriminatory manner and in conformity with commercial considerations. It provides the limits as to governmental control of state trading.¹⁷¹ The second obligation requires a positive action to be expected from governments, namely, to control whether the state trading enterprise is acting, in its purchases or sales involving either imports or exports, in a manner consistent with the general principle of non-discriminatory treatment as prescribed in the General Agreement measures.¹⁷² The third obligation requires the state trading enterprise itself to act in a manner consistent with the general principle of non-discriminatory treatment¹⁷³ and with the so-called commercial consideration clause.

According to Article XVII 1 (b), the state trading enterprises shall act "solely in accordance with commercial considerations, involving price, quality, availability, marketability, transportation and other conditions of purchases or sale, and shall afford the enterprises of the other contracting parties adequate opportunity in accordance with customary business practice, to compete for participation in such purchases or sales."¹⁷⁴

As Dam has pointed out, however, these rules were no more than a general restatement of the purpose of the MFN clause which, in any case, is intended to apply only to the occasional situation

where the state, by virtue of its participation in an enterprise, is able to influence its decisions.¹⁷⁵

Three qualifications are given to the general obligation of non-discriminatory treatment.

- (1) It does not apply to imports for the immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale.¹⁷⁶ This exception makes a distinction between public procurement and state trading. Goods for commercial rather than for government use are still subject to the principle of non-discriminatory treatment of GATT. The standard for government purchases is the so called "fair and equitable treatment" of imports, a criterion close to non-discriminatory treatment¹⁷⁷.
- (2) It is not a breach of the "commercial considerations" if a state trading country determines the import source by the terms of tied loans.¹⁷⁸ This is because, as some experts stated, that competition in the international lending industry is "macroscopically economic (rather than political) in nature and therefore should be a relevant commercial consideration in a country's procurement decisions".¹⁷⁹
- (3) Export price discrimination is not deemed to be a violation of the obligation of non-discriminatory treatment provided that the different prices are charged for commercial reasons in order to meet conditions of supply and demand in export markets.¹⁸⁰ This exclusion might be viewed as an excuse for price discrimination under the coat of meeting-

foreign-market-conditions. Moreover, as Professor Dam has pointed out, this exclusion implies an asymmetrical result, and lack of a similar provision for import price discrimination means that such discrimination violates the obligation of non-discriminatory treatment.¹⁸¹

The scope of this Article XVII covers those enterprises which are either established or maintained by the contracting parties, or granted formally or in effect, exclusive of special privileges by the contracting parties. However, it was considered that the Article's scope was broadly over-stated ¹⁸² because the interpretative note to the Article includes, within its scope, the type of state established marketing boards which simply set regulations for private traders, but do not themselves engage in trade.¹⁸³ This note explicitly introduces two types of state established marketing boards within the Article's scope. The other type is those engaged in purchasing and selling. This type was submitted within the meaning of state trading enterprise.¹⁸⁴

The operation of the state trading enterprise may result in an increase of protection above the limits agreed upon by the partner countries.¹⁸⁵ Therefore, it is important to conduct "negotiations on the reciprocal and mutually advantageous basis designed to limit or reduce such obstacles"¹⁸⁶ in order to expand international trade.

To assure a general obligation of non-discrimination, a duty was created for countries having the state trading enterprises to notify all contracting parties of their operations when they are requested by the contracting parties in the situation referred to by GATT provisions.¹⁸⁷ Patterson, however, pointed out that

an undertaking by the state trading countries to abide by GATT was meaningless, because compliance could not be verified. Even if they abided they might use other means unique to their systems to create trade barriers without being covered by GATT.¹⁸⁸

Article XVII; 4(b) also provides for a contracting party which maintains some state trading enterprises the obligation to supply information about their operation. Upon request of another contracting party having a substantial trade in the product concerned, a contracting party shows the "import mark-up" on the imported product over which it has a state trading monopoly.¹⁸⁹ The interpretative note to this paragraph defines the import mark-up as the difference between the domestic resale price and the landed cost of the imported product.¹⁹⁰

However, here comes the question whether Article XVII; 4 may apply, in theory and in practice, to members having the state trading systems. Some believed that since instruments used to control state trading might be the same as those used to control other trading, state trading was then the object and not an instrument of trade control. Therefore, there was no reason why the provisions of the General Agreement could not be applied to a state trading country.¹⁹¹ It was further argued that the incompatibility with the provisions of GATT would therefore not appear in relation to the form of ownership but in relation to some forms of trade control and certain forms of imperfect competition.

Others were of the opinion that it was difficult to determine the resale price in a state trading country.¹⁹² This opinion argued that since prices were not determined by the free market conditions but rather by the state itself, resale price

did not reflect fair market value, but rather a governmental decision based on factors other than market conditions.¹⁹³

Still others argued that what matters most in this regard was not the difference of systems¹⁹⁴ but the broad exception of Article XVII; 4 (d), which provides that a contracting party shall not be required "to disclose confidential information which would (a) impede law enforcement or (b) otherwise be contrary to the public interest or (c) would prejudice the legitimate commercial interests of particular enterprises."¹⁹⁵ It is apparent that all the three categories of exception allow a reporting country itself to judge subjectively whether this disclosure requirement is applicable. In fact, the practice is unsatisfactory as little information has been disclosed by the state trading parties of GATT.¹⁹⁶ For example, Poland, considering this notification scheme inappropriate, only listed their trading procedure and goals and attached a covering note indicating that state trading in the sense of Article XVII did not exist in Poland.¹⁹⁷

As discussed below, it would be very difficult to apply the obligations of non-discrimination imposed by GATT to the state trading countries with a highly centralized economic system due to GATT's free market basis and the inherent drawbacks of the provisions of Article XVII.¹⁹⁸

It should also be pointed out that the theory of free market economy had a dominant position in the General Agreement drafting. This is evidenced by the fact that the GATT provisions on state trading were drafted essentially with state trading by market economies in mind.¹⁹⁹ This also explains why

it is difficult to apply GATT provisions on state trading to the planned economies and to integrate the state trading countries into the framework of GATT.

3. Flexibility of GATT

Due to GATT's flexibility and pragmatism, GATT has played an important role in developing new international rules for international trade relations.²⁰⁰ GATT has been adapted by the contracting parties to the changed world economic and political situations.

Under the amendment procedure of GATT,²⁰¹ unanimous consent is required to change Articles I, II and the Schedules, XXIX and XXX. Other amendments become effective "in respect of those contracting parties which accept them" upon acceptance of two thirds of the members.²⁰² Although it is very difficult to get GATT amendments into force, GATT tends to operate as if some of these agreements were in force notwithstanding the contrary technical situation.²⁰³ GATT members have tried other methods to amend GATT, such as the practice of "certifications", the use of an error rectification technique, replacement of a change in the text of a treaty by a decision, and entering into a wholly separate treaty.²⁰⁴ A dissenting cp is entitled to require that the accord of a two-thirds majority, by which a new comer accedes to GATT, not be applied to its relations with the newcomer,²⁰⁵ The U.S. invoked this article against Yugoslavia, Rumania and Hungary in the initial period of these countries' membership.

In addition to the amendment procedure, GATT also provides a waiver procedure,²⁰⁶ permitting release from specific rules of

GATT when a country's economic circumstances so warrant. It is considered the most important power of GATT cps.²⁰⁷ The general substance of the waiver power covers two aspects: (1) the criteria for granting a waiver, and (2) the power to define categories of circumstances for special waivers. However, the only criteria for a waiver specified in Article XXV:5 is that it must be "(i)n exceptional circumstances not elsewhere provided for in this Agreement."

Article XXXIII provides that governments may accede to this agreement on terms to be agreed between such government and the cps. Decisions of the cps under this paragraph shall be taken by a two-third majority. Under this article, two prerequisites are provided: (1) an agreement between the acceding party and the cps; and (2) a decision of the cps. The negotiation may be a time-consuming process. A series of "stages" of participation in GATT is needed.²⁰⁸

According to Professor Jackson, the traditional practice in GATT has been for accession to be preceded by negotiations of tariff concessions, the so-called "ticket of admission".²⁰⁹ Perhaps the most difficult problem with the accession is the evaluation of the extent of tariff or trade concessions that the newly acceding government must grant to the other countries in GATT.²¹⁰ He believes that these evaluation problems, are difficult, if not impossible, to solve, because the existing contracting parties to GATT have been through a number of rounds of tariff negotiations and have lowered their tariffs in accordance with the agreements made at these various rounds. The new participant theoretically should grant reciprocal concessions that would amount in value to the value received by it from the existing tariff concessions in GATT. Although this protocol for

accession may provide a suitable means of accommodating GATT to the needs of the State trading countries,²¹¹ further problems arise when the method is applied to some socialist countries. The negotiation of the terms for accession is not based on reciprocal tariff deductions as it is done between the market economies. Different reciprocity has been developed to deal with this special condition, as will be discussed.

GATT contains many articles permitting safeguard measures.²¹² Anti-dumping and countervailing duties, for example, allow a defense to the introduction into the domestic market by a foreign government or enterprise of unfairly low-priced imports. Furthermore, GATT also incorporated some provisions which allow the imposition of quantitative restrictions on imports.²¹³ However, quantitative restrictions are to be imposed on a non-discriminatory basis,²¹⁴ and a trade partner that suffers from the quantitative restrictions may require some other concessions in order to offset its loss.

In short, these provisions, whether effective or not in regulating East-west trade in GATT, did provide ways for GATT to negotiate with the centrally planned economies. As commented by Professor Kostecki, they also provided a considerable degree of flexibility as far as the establishment of obligations between socialist states and the cps is concerned.

4. Consultation And Transparency

The cps are recommended to promptly forward their trade regulations to GATT. Article X requires contracting parties: (1) to publish their trade law and trade agreements; (2) to refrain

from enforcing a law until it is published; and (3) to administer its trade laws in an "impartial and reasonable manner" and maintain "as soon as practicable" appropriate tribunals for this purpose. This provides a way of learning about the laws and trading practices of the cps; particularly on balance-of-payments restrictions.

Under GATT, there are also special reporting obligations regarding state trading, countervailing duties, subsidies, licensing, safeguard action and other such activities. Article XII: 4, for instance, provides for considerations in a number of situations in relation to quantitative restrictions.²¹⁵

In addition, requirements are also provided in GATT for periodic consultations on specific matters and ad hoc consultations. In the viewpoint of Professor Kostecki, consultations are the primary formal technique of policy coordination in GATT. They are especially intended to clarify difficulties relating to application of GATT rules.²¹⁶ It is true that secrecy and lack of transparency do cause troubles to trade relations. Information and transparency are particularly important for trade between partners with different economic and trading systems. Nevertheless, socialist States might not be willing to open their entire economic system to outside examination,²¹⁷ unless it is based on specific, legitimate trade concerns.

C. State Trading in Socialist States

In this part an analysis is offered to the traditional socialist trading theory and systems, as well as some

characteristics of the reforms currently underway in some socialist states.

1. Socialist Theory Of Foreign Trade

The cornerstone of classic socialist theory in this respect is that the state must have an absolute monopoly of foreign trade.²¹⁸ According to this theory, the scope of monopoly not only covers all the export and import operations, but also extends, moreover, to all the economic relations between both socialist states and the rest of the world. State trading is considered a powerful tool to achieve an economic organization suitable to prevent capitalists from expanding sales in a socialist, and ultimately, a communist society. The main purpose of monopolizing foreign trade are twofold, namely, 1) to fend off capitalist economic penetration, and 2) to promote domestic capital formation. Vladimir Ilyich Lenin lashed out at Nikolai Bukharin's idea that the Soviet State could protect its infant State industries by high tariffs in the following words:

Bukharin does not see that no policy of tariffs can be effective in the imperialist epoch when there is a monstrous difference between the poor countries and those of unbelievable wealth. Bukharin refers to protection by tariffs, failing to see that under the conditions referred to any one of the wealthiest countries can break down this protection.²¹⁹

In accordance with the classic socialist theory, trade must complement the domestic objective of self-sufficiency. Foreign trade is simply an instrument for exporting surpluses so as to use the foreign currency obtained thereby to import deficiencies. Therefore, the instrument is only necessary when the goal cannot be achieved at any particular time. Policies are not made on the consideration of how they will increase wealth. One

major objective of China's foreign trade policy, for instance, was to strengthen the economic independence and sovereignty of the state, and to protect domestic industry and agriculture from the economic aggression of imperialist powers. Another important objective is to serve the development of China's industry, particularly heavy industry.²²⁰ In other words, "export is for import, and import is for the country's socialist industrialization."²²¹ A third objective is to achieve economic self-reliance.

2. Trade Monopoly And Control

Generally speaking, socialist economic systems are based on State ownership of the means of production. Under this system, the allocation of resources is conducted through a central plan; the settling by government officials of mandatory general and specific goals regarding production, exchange, and distribution, and procedures for attaining the goals. Those goals and procedures are expressed in physical and technical terms and enforced primarily by administrative means. The socialist system of foreign trade has three principal characteristics. The first is that socialist trade is operated and administered exclusively by State agencies rather than individuals. The second is that socialist foreign trade is conducted on the basis of central economic plan and instruments other than market forces. The third is that foreign trade and central plan are under the direction of government. It is the three characteristics that distinguish state trading in socialist states.

a. Foreign Trade Plan.

In socialist States, all economic activities, including foreign trade, are conducted according to the national economic

plan to be implemented by State organs. It is the plan that commands the dynamics of imports which, in turn, determine the dynamics of exports. Foreign trade is regulated by State plan and control which set the prices and output of goods. Scant consideration is given to factors such as cost and efficiency. ²²² Resources are not regulated by a market, but instead by central planning, with incentives encouraging compliance with the plan; governments usually do not interfere with the market process, but instead replace it. The volume, value, structure, and direction of trade are all decided by governments. Therefore, tariffs, the key factor in the foreign trade of the market economies, play little role in the planned economies.

Imports are therefore basically restricted to items that either cannot be produced domestically in the quantities required in the plan or at sufficiently low cost. Exports largely consist of commodities for which domestic production exceeds demand either as a result of resource endowment, a deliberate investment policy or even a past surge in production for which the domestic market is now saturated.

Theoretically, the procedure for making a plan is: a general outline of the annual economic plan is drafted on the basis of the overall economic goals and the planned growth of key industries.²²³ The foreign trade plan was set by mutual agreement among individual industries. The indicative plans and prospects are first submitted by the foreign trade planner to particular economic units. The economic units in turn consider them, draw up and pass back to the planner a preliminary requirement for production, of foreign trade schedules. The final decision falls within the competence of the planner.

b. Foreign Trade Instruments.

In the centrally planned economies, production is not typically determined by price but stipulated by planners who have previously set economic goals for the country and are seeking the correct allocation of resources to reach these goals for the country. The price is usually established only after the quantities to be produced have been determined. Pricing depends on a variety of economic, social and political factors rather than on market factors. In this case, there is no necessary relationship between domestic pricing and foreign pricing. It is said that under this system prices are distorted, artificial and arbitrary.²²⁴ As the International Trade Administration of the Department of Commerce explained in its Carbon Steel Wire Rod from Poland the negative countervailing duty determination:

{W}e have found generally for NMEs... that prices are administered and that these prices do not have the same meaning as prices in a market economy. Not only are the NME enterprise's output prices controlled, but also costs, which are the prices paid for inputs, also are centrally determined. With administered costs and prices, profits are effectively administered as well. Finally, economic activity is centrally directed through the use of administered prices, plans and targets.²²⁵

Centrally planned economies are also characterized by their inconvertible currencies.²²⁶ The basic rationale for currency inconvertibility is that convertibility would disrupt central planning.²²⁷ If it could be converted into dollars, and vice versa, free purchasing of goods across national borders would in theory be facilitated,²²⁸ upsetting the central plan under which production and distribution of goods are carefully controlled.²²⁹ The upshot of the inconvertibility of socialist

currencies, in tandem with central economic planning, has been the chronic balance-of-payments problem of socialist States.²³⁰ In order to purchase western goods, centrally planned economies have to use hard currencies. But because of the poor quality of their manufactured goods - attributed to the lack of competition and the emphasis on quantity over quality of production in the planned economies,²³¹ the demand for those products in the West is low, thus inhibiting their ability to earn sufficient foreign exchange to pay for its purchases in the west.

c. Foreign Trade Institutions

The foreign trade structure in socialist States usually consists of a hierarchy of organizations including a State Planning Commission, a Ministry of Foreign Trade (MFT), insurance and transport organizations, a Chamber of Commerce, and foreign trade corporations and various marketing and promotional organizations, such as commercial counsellors, permanent trade delegations and trade fairs, etc. The exchange rate is monopolized by the Ministry of Finance, the State Bank, the Foreign Trade Bank and the Central Customs administration. They are concerned themselves with balance-of-payment problems.

Foreign trade corporations are generally state-owned enterprises authorized to carry out import and export transactions. Their work is supervised by the Ministry of Foreign Trade. Theoretically speaking, these units may have the status of independent legal entities. They are separated from the state legally and financially, and are not liable for any obligations contracted by the state and vice versa. They own and dispose of property and have the right to assume contractual obligations within the operational responsibilities defined by the Ministry.

However, it was considered that numerous problems could arise in practice in ascribing such a status to them, particularly when the legal regime governing their status of incorporation was unclear.²³²

When Poland, for instance, started applying for GATT membership, the legal status of foreign trade enterprises was determined by the 1950 decree on government enterprises²³³ and the 1964 Civil Code. These enterprises were chartered, organized and staffed by the Ministry of Foreign Trade or by other competent ministries. Their foreign trade operations must conform to the foreign trade regulations, identical for all types of foreign trade organizations as regards the legal capacity to make contracts, licensing of imports and exports and registration with the Polish Chamber of Foreign Trade. In China, there were all together nine State trading corporations until 1979. Under the the control of the MFT, they monopolized all import and export transactions. This system ensured that there was no contact between domestic producers or users and their foreign customers or suppliers. It limited not only exportsbut also the possibility of using imports with maximum efficiency.

D. Summary And Comments

To sum up, the purpose of foreign trade monopoly in socialist states is to shield the central planners' control of economy from the influence of world market. Things are arranged in such a way that it is impossible for some firms to look at the foreign price, the exchange rate, and the domestic price and to decide to export or import some goods because they are cheaper or more profitable. That would interfere with the planners' prerogative of deciding how resources are to be used. All foreign trade operations are conducted by the MFT in accordance with

the foreign trade plan. The Ministry of Foreign Trade conducts its foreign trade operations in a way that eliminates most of the equilibrating instruments and mechanism familiar in trade between market economies.

The centralized planning of supply prevents an enterprise from responding to orders arising from outside the planning. Before trade can take place, orders must be directed through the foreign trade ministry and the internal production and supply. Arrangements are made by the appropriate domestic central planning authorities. Under these circumstances the national currencies of socialist countries are said to be 'commodity inconvertible' - the foreign owner of socialist country's currency cannot convert it into any commodity he may demand.²³⁴

As noted above, foreign trade is carried out for implementing various plans, under which, all economic units undertake legal obligations in the field of administrative law. The plans, likewise, define their product competence as well as rights and obligations in foreign trade. These obligations include production quotas for factories and directions for the factories to purchase raw materials and to dispose of their products. The foreign trade units are required to acquire goods for export from State producing enterprises at domestic wholesale prices and to sell in foreign markets at the best prices available. There are separate obligations concerning currency control and bilateral intergovernmental agreements. In the case of imports, the foreign trade units are directed to buy nominated goods in foreign markets and to sell domestically at nominated prices similar to the prices of domestically produced goods. Three disadvantages appear:

- (a) all domestic prices are determined by the national plans and the foreign trade units have little discretion;
- (b) the producer is isolated from the foreign consumer, and
- (c) domestic prices are determined centrally without reference to the costs of imports or exports.

It is clear that the foreign trade regimes of socialist states are of the nature and characteristics of State trading previously described. Under this type of system, the central plan, rather than market forces, plays an important role in the process of trade transactions. Therefore, it is difficult to integrate the socialist states with such a highly centralized economic system with GATT system, which is based on free market economy.

In recent years, however, there have been economic reforms in some socialist states, particularly in China. Generally speaking, there are three features in the socialist reform trends. First, the Ministry of Foreign Trade in socialist States involves less direct control over foreign trade organizations, and the producing enterprises may directly contact foreign customers during negotiations. This will facilitate solving the problem of separation of foreign trade from the production of goods. As the Chinese government allows individual economic entities greater control over their own import and export decisions, China's foreign trading system is generally becoming more decentralized.²³⁵ Its internal economy is also being modified so as to give a greater role to market forces. Under the new policies, individual entities would control their own pricing, production, purchasing and marketing decisions.

In Poland, Polish Council of Ministry decided on December 7, 1966, to encourage the direct involvement of producers in foreign trade operations by permitting broad associations of producers to establish their own foreign trade agencies and by authorizing large government enterprises to handle their own transactions. Normally, in the case of a large company or a government enterprise, a foreign sales or imports department becomes an integral part of the enterprise's operation. Sometimes, smaller firms are encouraged to organize a joint stock company, of which they become stock holders, to handle their foreign trade transactions and represent their interests exclusively.

Second, economic measures come to replace administrative ones in foreign trade control. Profits have been used as an incentive to trade and production in some countries.

Another important change is the reform of the pricing system. Price is playing a more and more important role in foreign trade. It has become related to costs. In China, The prices of some categories of goods may be free from central planning and be made responsive to market forces. Price reforms and responsibility for profits and losses could help assure that the actual cost of inputs will be passed on to Chinese exporters who manufacture goods with domestic materials, thereby preventing them from pricing their exports artificially low.²³⁶

All these changes will be helpful to the establishment of the relation between foreign and domestic pricing. Foreign and domestic prices will influence one another. They will also be conducive to the expansion of trade between East and west. Therefore, those modifications will very likely make those state

trading countries more acceptable to the cps, because their trade systems are closer to that of the General Agreement.

It is difficult to apply the principles and provisions on state trading of GATT to east-west trade, because socialist states cannot be asked to abandon completely the policy of central planning or the state monopoly of foreign trade in order to be accepted in GATT. Pragmatism, however, has facilitated resolving various issues raised by the contracting parties, each with its own diverse political and economic problems.²³⁷ Exceptions to the general non-discriminatory treatment have been made to accommodate preferential trading areas and the developing countries. It was expected that the same thing could also be done to the state trading countries. In fact, GATT did demonstrate its flexibility and a measure of neutrality in handling the dispute over socialist participation. Although GATT is a typical institution of sovereign states, it assumes some of the characteristics of a standing organization serving essentially as a multilateral treaty to provide for periodic negotiations and for the accessions of new participants. At least, it has not presented itself to socialist States as a rival organization despite its western origin and essence.

IV. GATT EXPERIENCE WITH EAST EUROPEAN COUNTRIES

In the early post-war period, socialist states kept a cautious attitude towards GATT and multilateral trade.²³⁸ As less developed countries, they believed that trade protection was necessary for their own industrialization, and insisted that the principle of non-discrimination in trade was inappropriate in a world of rich and poor countries.²³⁹ Moreover, GATT as described before, was and still is intended for the free market

economies, i.e., trade is based on purely economic considerations.²⁴⁰

However, since 1955, the attitude of socialist states towards the principles of multilateralism and non-discrimination has taken a dramatic change. They proposed to develop trade relations with the western countries on the basis of the MFN clause. Yet, this proposal was rejected by major GATT members. There were heated arguments on the application of the MFN clause to trade between East and West.

A. Controversy Over MFN Clause

1. Different Opinions On Application Of MFN Clause

The views put forward by some western countries, mainly western European countries, can be categorized into these arguments.²⁴¹ First, non-discrimination undertakings applied mainly to tariff treatment and not to the prohibition of discriminatory treatment under quantitative restrictions or under market regulations or export discrimination on "strategic" grounds, especially in view of the fact that such restrictions and regulations were implicit in the systems of socialist countries. Assurances of a lack of discrimination could not, therefore, be relied upon to be effective in practice;²⁴² Second, such undertakings, even if applied only to tariffs, required special forms of application due to the differences in economic and social systems.

On the other hand, socialist states argued that nondiscrimination undertakings applied not only to tariffs but also to all forms of trade restrictions or regulations. In addition, according to their arguments, there was no

discrimination in their own systems except in response to discrimination exercised by other countries. Furthermore, they were prepared to consider with their trade partners the question of "mutual advantage", but that the principle of non-discriminatory treatment should be the only basis for trade relations.²⁴³

Regarding the meaning of the non-discriminatory principle as it affects international trade between countries with different economic systems, experts from countries with market economies, pointed out that because of the differences in systems it was difficult to define and, in fact, to verify a meaningful application in the planned economies of non-discriminatory undertakings. Indeed, certain provisions of bilateral trade and payment agreements might lead to practices difficult to reconcile with the non-discriminatory principle.²⁴⁴

Experts from countries with the planned economies insisted that there be no difficulty in applying the non-discriminatory principle to countries with the planned economies or in verifying that real benefits were granted under this principle to exports from countries with the market economies. Foreign trade organizations were autonomous bodies obliged by law and regulations to operate according to commercial considerations, and the planning of import policy did not discriminate between foreign suppliers or fail to take into account the availability and prices of goods which would be imported. They also pointed out that quotas and quantitative indications in bilateral trade and payments agreements did not mean that foreign trade transactions would take place under other than competitive conditions. These provisions of bilateral agreements were not in any sense discriminatory and had never

been regarded as involving practices incompatible with the non-discriminatory principle. Moreover, they contended that application to their countries of discriminatory quantitative restrictions by certain market economies was incompatible with the principle of non-discriminatory treatment of GATT.²⁴⁵

2. Legal Nature Of Non-Discriminatory Principle

Socialist states and western countries contended bitterly about the legal nature of the principle of non-discrimination. Socialist states argued that the principle was a juridical expression in the field of trade of the principle of sovereign equality as expressed in Article 2 of the UN Charter. Furthermore, the principle of non-discrimination was the logical extension of the said Article, calling for the development of friendly relations based on respect for the principles of equal rights. To socialist states, the clause had value not because it was traditionally an instrument through which trade had been expanded, but rather because it laid emphasis upon equal treatment, and from which friendly relations were expected to grow.²⁴⁶ Socialist States agreed that they could not demand the granting of non-discriminatory treatment as an international duty. Nevertheless, they insisted that when it was granted, it be a correct implementation of a principle now enshrined in the UN Charter. In essence, it promoted in an indirect way the friendly relations between states. Discrimination against trade might negatively affect the relations between states. Thus, the non-discriminatory principle had the nature of public international law.²⁴⁷

On the other hand, some Western scholars argued that it was not yet established that non-discriminatory treatment had

become merely a reflection of a new standard in customary international law. To them, the treatment did not bring the issue of equal treatment of States, but it was mainly a device to protect traders, whether private-enterprise firms or State-trading enterprises. The essence of non-discriminatory treatment was really related to an issue in the private sphere without touching a public-law problem of the equality of states.²⁴⁸

In the view of the International Law Commission, the principle "may be considered as a technique or means for promoting the equality of States or non-discrimination. Nevertheless, while states are bound by the duty of the principle of non-discrimination, they are free to grant special favours to other states on the ground of some special relationship of a geographic, economic, political or other nature. In other words, the principle of non-discrimination may be invoked by any State. But a State cannot normally invoke the principle against another State which has extended particularly favourable treatment to a third State, provided that the state concerned has itself received the general non-discriminatory treatment on a par with other states. The claim to most-favoured-nation treatment can only be raised on the basis of an explicit commitment of the State granting the favour in the form of a conventional stipulation, namely, a most-favoured-nation clause."²⁴⁹

From the inception of GATT, the application of the non-discriminatory treatment by a member to all other members has been a fundamental principle of the General Agreement. The treatment is based on the principle of reciprocity. Apparently, socialist States have found that this principle does not create any problems. Moreover, they have stressed time

and again in international debates and in their draft resolutions on trade matters that trade should be "mutually advantageous". In the viewpoint of western countries, the principle will certainly cause problems in east-west trade. This explains why western countries have shown a negative attitude towards attempts made by socialist states in the 1950's to get non-discriminatory treatment from Western countries.

This dispute over the principle has not been resolved up to now, despite efforts made by the ECE in recent years to find a formula which would recognize that non-discriminatory commercial treatment is an objective to be sought and that its application in trade between countries with different economic systems requires some arrangements or understandings in the interest of "effective reciprocity" or "mutual advantage". However, there was a general consensus between the two different economies that detailed discussions on the theoretical concept of the non-discriminatory treatment and its application in trade between countries with different economies would be less profitable at present than a realistic and practical approach to the subject. It was also agreed that the general objective should be "to achieve an equitable and mutually advantageous balance and increased trade on the basis of the principle of most-favoured-nation concept".²⁵⁰

To this end, it was thought useful to work out a guid pro quo technique for negotiating multilaterally meaningful and balanced concessions on the basis of effective reciprocity under different economic systems. This consensus, to a certain extent, paved the way for the negotiation between socialist States and the cps in GATT.²⁵¹

B. GATT Preliminary Experience With East European Countries

1. Czechoslovakia And GATT

Czechoslovakia is one of the original signatories to GATT.²⁵² However, Czechoslovakia was not a centrally planned economy until final ratification of GATT. It was the former Czech government that took part in the initial negotiations creating GATT.²⁵³ After the founding of the socialist government of Czechoslovakia, it decided to accept GATT and thus became the first contracting party to GATT having a centrally planned economy. Nevertheless, GATT did not negotiate with Czechoslovakia on its terms of membership in GATT so as to adjust to these changes.²⁵⁴ One of the reasons may be that this first application of GATT principles did not arise from a separate application for accession.²⁵⁵

However, this does not mean that Czechoslovakia's presence in GATT has not met any problems in its relations with GATT members. The most serious one was probably the breakdown in trade relations between Czechoslovakia and the U.S. in 1951, due to a mandate from the U.S. Congress.²⁵⁶ A series of disputes therefore, resulted in the relations between the two countries. Believing that Czechoslovakia's tariff was no longer her essential instrument for trade, the U.S. protested Czechoslovakia's continual grant of tariff concessions to GATT members as fictitious.²⁵⁷ The U.S. Congress accepted the trade Agreement Extension Act requiring withdrawal of MFN treatment in trade with the "Communist dominated countries", irrespective of her obligations to Czechoslovakia under GATT. The U.S. maintained that events within Czechoslovakia - the nationalization of enterprises, the confiscation of western property and the

establishment of a trade monopoly - rendered the normal trade relations in GATT impossible. Given the political overtones of the controversy and its apparent insolubility, the U.S. renounced its relations with Czechoslovakia under GATT.

The Czech government, however, criticized the U.S. discriminatory trade policy against socialist countries. The Czechs asserted that it was the U.S, and not them who had broken commercial relations. They argued that the changes taking place in their countries did not constitute a relevant factor of discrimination.²⁵⁸ Both the U.S. and Czechoslovakia considered that the issues were politically oriented that they could not be solved through GATT framework. The problem was solved pragmatically by suspending the MFN treatment with respect to one another. The U.S. has consistently invoked Article XXV of GATT, that on the basis of existing U.S. legislation the government is not empowered to negotiate tariff concession with socialist countries.²⁵⁹ In the event, however, none of the other contracting countries, mainly the Western European countries, followed the example of the U.S. although many of them retained restrictions such as discriminatory tariffs, quotas and licensing on trade with Czechoslovakia at that time. It was not in their interests in disrupting the trade relations with Czechoslovakia. On the contrary, they wanted to maintain their traditional contracts with Czech industries.²⁶⁰ It was in the interests of all contracting parties to preserve the GATT treaty.

Another serious problem that Czechoslovakia met was the difficulties with its membership in the IMF. Czechoslovakia was forced to withdraw from the IMF. The withdrawal would have required the Czech to enter into special exchange agreement with

GATT.²⁶¹ However, Czechoslovakia was granted a waiver releasing her from that obligation and an obligation to consult was replaced.²⁶² Thus, Czechoslovakia was able to maintain its place in GATT.

Apart from the two serious problems that Czechoslovakia had with GATT, Czechoslovakia also came up with some technical issues concerning the participation of the centrally planned economies in GATT.²⁶³ It was considered that appending an interpretative note to GATT's dumping article and introducing additional criteria on dumping were due to Czechoslovakia's presence in GATT, because GATT's criteria on dumping failed providing a fully satisfactory standard for relations with a centrally planned economy like Czechoslovakia.²⁶⁴

Another problem was how to make appropriate reciprocity arrangements between Czechoslovakia and other GATT countries, since trade systems in these two types of economies were so fundamentally different that simple reduction of Czech customs tariffs could not convince GATT partners to grant the MFN treatment to Czechoslovakia.²⁶⁵ Although Czechoslovakia had tried to follow the lines of Poland by offering an import increase from GATT members by a given percentage for a certain period in exchange for the MFN treatment, most important GATT countries refused this proposal.

Despite the difficulties that occurred as a consequence of Czechoslovakia's reverse to the planned economy, no serious problems arose within GATT from this event. Professor Jackson has suggested that one of the reasons that no serious problems had arisen might be that other GATT contracting parties did not feel that the amount of trade involved was consequential

enough to warrant an investigation of such problems as existed.²⁶⁶

It is true that Czech membership in GATT did not contribute much to the development of GATT arrangements for the centrally planned economies,²⁶⁷ and the terms of its membership were never used as precedent for extension of the MFN treatment to other socialist States. However, as a first socialist State in GATT, Czechoslovakia has set a precedent, that is trade between the market and non-market economies should be conducted without reference to political and ideological differences.²⁶⁸ On the other hand, Czechoslovakia's membership in GATT did result in, as described earlier, the development of GATT rules in dumping. Regarding Czechoslovakia's participation, the attitudes of most cps were quite pragmatic. They were not willing to stop the traditional trade relations with Czechoslovakia and hoped to continue this commercial relation. This relation, however, was not based on a GATT relationship but rather on a bilateral agreement. Nevertheless, Czechoslovakia was not expected very much in GATT and was treated in the west much the same as other socialist countries outside GATT.²⁶⁹ This was explained as the reason that Czechoslovak presence in GATT had not provided GATT with experience in dealing with other state trading countries' accession to GATT.²⁷⁰

2. Yugoslavia And GATT

Different from the case of Czechoslovakia, Yugoslavia, a centrally planned economy, began to apply to GATT for observer status in 1950.²⁷¹ During the following nine years, Yugoslavia made efforts to conduct economic reforms with a purpose of decentralization. Until 1959 an associated member status was

established in GATT.²⁷² Under the Declaration establishing this special relationship, Yugoslavia was obliged to move away from its domestic model of a centrally planned economy towards a position to be able to give full effect to the provisions of GATT. The GATT cps, on the other hand, assumed to accord to Yugoslavia "to the extent that Yugoslavia accords the treatment provided for in GATT, such treatment as will achieve an equitable balance of rights and obligations as envisaged in GATT." Annual reviews were also provided for in the Declaration to see the development of mutual relations.²⁷³ This relation of association meant that trade relations between Yugoslavia and the GATT cps would be conducted to the extent possible under Yugoslavia's economic system.²⁷⁴ It was also considered a test of possibilities of developing commercial relations with Yugoslavia under GATT rules and of encouraging Yugoslavia's movement towards full application of GATT.²⁷⁵ This special arrangement reflected, on the one hand, reservations by GATT cps about the economic systems in Yugoslavia.²⁷⁶ On the other hand, it also meant that GATT members had expected Yugoslavia's economic reforms to be implemented deeply enough to move to a market economy.²⁷⁷

During the three years of association, the GATT cps reviewed annually the Yugoslav economic reforms. Pursuant to its intention that customs tariff would become "the principal, if not the sole, means of commercial policy",²⁷⁸ Yugoslavia decentralized its economy, introduced tariffs, abolished multiple exchange rates, and became multilateralist in its trade relations.²⁷⁹ By 1962, the government of Yugoslavia claimed that its economy was no longer centrally planned as it had been in 1951, and "the mere fact that the economic enterprises were founded on the principle of socialist ownership had no

significant effect on the conduct of international trade". The GATT members were still doubtful, however, whether Yugoslavia's acceptance of the existing provisions and obligations of the GATT would afford adequate protection for the interests of other cps in their trade with Yugoslavia, having regard to the particular economic system of the country. This concern was not without basis. Yugoslav introduction of meaningful tariffs caused some difficulties, due in large measure to price disparities between Yugoslavia and the rest of the world.²⁸⁰ Owing to Yugoslavia's failure to bring its tariffs to levels acceptable for negotiations in GATT, GATT cps only agreed to Yugoslavia's provisional accession in November 1962.²⁸¹

Following further decentralization of its economy from 1962 onwards, Yugoslavia requested full membership in 1965, obtained full accession to GATT in August, 1966 under the terms of a Protocol of Accession,²⁸² identical to the normal GATT obligations as exist among the other cps.²⁸³ That is, on the basis of a schedule of tariff concessions.²⁸⁴ Yugoslavia based this request on the arguments that tariffs, under normal conditions, were the only instrument of trade control. It was contented that State trading was used but only as rare exception. Yugoslavia claimed that there existed a unified exchange rate and no export subsidies in its economic system. Directed trade control was used in a non-discriminatory manner and only for the purpose of balance-of-payments.²⁸⁵

Aside from economic reasons, political factors played an important role in Yugoslav accession to GATT.²⁸⁶ Yugoslavs break with the East European bloc and independent foreign policy were prerequisite conditions for its membership in GATT. Moreover, its relations with the United States had always been important in its path to GATT and in fact the process of its

accession had been influenced by this relation.²⁸⁷ The experience of Yugoslavia with GATT is particularly meaningful in present GATT practice in integration of socialist States into GATT. As summarized by Professor Kostecki:²⁸⁸

First, this experience, especially in its earlier stage, provided the GATT countries with the opportunity to acquaint themselves with difficulties that would arise in relations with target-protected, State-trading systems. Secondly, Yugoslavia's participation in the GATT provided empirical evidence that socialist economies could decentralize sufficiently to permit their membership of GATT under the same conditions as western market economies. Finally, Yugoslavia's road to the GATT clearly demonstrated that substantial reforms are required to shift from a target-protected, State-trading system to the GATT model of foreign trade and that, even under political conditions extremely favourable to decentralization, years of adjustment are necessary.

3. Poland And GATT

It took ten years for Poland to negotiate into GATT. As early as in 1957 there were informal discussions concerning Poland's participation in GATT. In October of that year, Poland became an observer in GATT. It provisionally acceded GATT in 1959. However, it did not fully accede until 1967.²⁸⁹

Initially, Poland wished to accede to GATT on a tariff basis, through the model of economic decentralization. Due to its failure in this respect,²⁹⁰ it presented to GATT a proposal based on the idea of an import commitment by Poland.²⁹¹ Although this proposal corresponded to suggestions made by the GATT Secretariat after previous consultations with the main GATT countries, Poland's efforts for full membership were only partially successful,²⁹² because several main contracting parties, such as the U.S., Canada and Britain, etc., did not

think that Poland was able to assume the obligations of full membership. Nevertheless, a declaration along the lines of that for Yugoslavia was issued in November, 1959 for the purpose of Poland's association with GATT.²⁹³ It provided a different formula for closer relations with the Polish government. But its terms were much more vague than that for Yugoslavia. It also failed to define a basis for Poland's participation in multilateral trade negotiations.²⁹⁴

After a number of difficulties in a period of ten years,²⁹⁵ step by step Poland obtained greater acceptance in GATT. It became a member of the Council, participated in the Kennedy Round²⁹⁶ and finally acceded to GATT. Provisions for Poland's accession may be summarized as the follows:

- a) Poland undertake to increase the total value of its imports from the cps by not less than seven per cent;
- b) the cps maintaining discriminatory prohibitions or quantitative restrictions against Poland undertake not to increase and progressively relax the discriminatory restrictions during a transitional period within undetermined duration;
- c) The implementation of the provisions is to be subject to annual consultations and review. The review examines the fulfillment of the commitments and the development of Polish trade, sets Polish import targets for the following year, and considers the possibility of setting a terminal date for the transitional period;

- d) The cps may take discriminatory safeguard action against Polish exports in case they cause or threaten serious injury to domestic producers;
- e) The withdrawal of "equivalent" concessions may be made if no agreement is reached in consultations following either the non-fulfillment of the Polish import commitment or the imposition of safeguard measures against Polish exports.²⁹⁷

This import commitment formula of Poland was based on the consideration of the nature of Polish foreign trade system.²⁹⁸ Poland was treated as a State trading country at the time of accession. Its customs tariff was deemed to be effectively a purchase tax and not a significant factor in domestic price formation because it applied only to certain imports for personal use.²⁹⁹ Poland introduced a full-fledged customs tariff in January, 1976. However, no amendment was ever made to this formula in the Protocol. As learned Laczkowski pointed out that "Poland quantities (or values) to be imported could not be considered on the same level (legally or materially) as quantitative restrictions..."³⁰⁰ Actually the effect of the protocol is to place the actual conduct of trade by the centrally planned countries on an entirely different level.³⁰¹

4. Romania And GATT

Following the Polish model, Romania acceded to GATT first as an observer in 1957.³⁰² Although it did not experience any extended period of association,³⁰³ it took ten years for

Romania to become a full member of GATT.³⁰⁴ In fact, political factors played an important role in the Romanian approach to GATT,³⁰⁵ despite the fact that it did not enjoy the MFN treatment in the U.S. market at the time of late 1950s and early 1960s.³⁰⁶ Romania was not in a hurry to accede to GATT because it wanted to wait until the completion of negotiations with Poland and see the result of the NME test of Poland.³⁰⁷ Even though the political atmosphere was favourable, Romania still weathered many of the similar problems that Poland had experienced during its accession negotiations, such as the problems of discriminatory quantitative restrictions, safeguards and reciprocity.³⁰⁸ In the absence of a customs tariff, and with an economy that was clearly planned, a target control and State trading country, as in the case of Poland,³⁰⁹ Romania applied for membership in 1967,³¹⁰ and acceded to GATT in 1971.

Nevertheless, it was provided that Romania might be able to renegotiate its import commitment on the basis of tariff concessions by virtue of "possible changes in the foreign trade regulations of Romania. In January, 1974, Romania introduced a customs tariff. The fact that the Working Party established to examine it had not been able to conclude its work was considered an indication that a serious disagreement among the participants on whether the Romanian tariff played an important role in decision-making vis-a-vis imports. Romanian Protocol of Accession contains the following:

- a) a firm intention to "increase its imports from the cps as a whole at a rate not smaller than the growth of total Romanian imports provided for in its Five-Year Plans";

- b) a commitment by the contracting parties maintaining discriminatory prohibitions or quantitative restrictions against Romania's exports that the discriminatory element in these restrictions would not be increased and that these restrictions would be removed by the end of 1974 unless "exceptional reasons" prevented it;
- c) biennial consultations to review the fulfillment of these commitments and the development of Romanian trade;
- d) possibility for discriminatory safeguard action against Romania's exports;
- e) procedures for the withdrawal of "equivalent concessions if no agreement is reached in consultations on the fulfillment of mutual commitments and any safeguard action against Romanian exports.³¹¹

5. Hungary And GATT

Since the mid-1960s on, Hungary had been preoccupied with the reform of its economic system. Generally speaking, the Hungarian New Economic Mechanism (NEM) aimed at increasing the market's role in the domestic economy and in foreign trade. That is to say to base its economic system on market relations while maintaining central control over the direction and rate of development of the economy.³¹² Under the NEM, enterprises would have great autonomy in production and foreign trade though the fulfillment of a central plan remained a general criteria of enterprise success.³¹³ State control over enterprises would be

only through the means of market levers.³¹⁴ Although Hungary was still considered a centrally planned economy, its tariff structure was consistent with GATT rules.³¹⁵ However, the State continued to retain ownership of the means of production by transferring those to the enterprise to be used for its stated purpose.³¹⁶ Namely, the State still retained the power to create, close down, or merge enterprises for the purpose of controlling the structure of the economy.

Similar to Poland and Romania, Hungary applied for observer status in GATT as early as in 1958 but was rejected due to the political situation in Hungary.³¹⁷ In 1966, however, Hungary made a second application for that status and was accepted. Three years later, Hungary, unlike Romania and Poland and in imitation of the Yugoslav model, decided to apply for full membership on the basis of tariff concessions.³¹⁸ At first, the contracting parties were suspicious of the effectiveness of Hungarian tariffs, for they were afraid that it might be subverted by restrictions on pricing and State monopoly.³¹⁹ After four years of debate and consultations on the matters, the Working Party was convinced that Hungarian tariffs were in fact its primary method of trade protection and able to recommend tariff concessions as the basis for the accession of Hungary to GATT.³²⁰ After successfully conducting tariff negotiations with GATT partners, Hungary became a full member of GATT in 1973. Although Hungary finally got accession to GATT on the basis of a Schedule of Tariff Concessions without specific quantitative import commitments, Hungarian Protocol of Accession contains similar elements from the Polish and Romanian Protocols. The contents of the Protocol include the following:

- a) the binding of tariffs in a Schedule of Concessions;
- b) the permissibility of the maintenance by Hungary of its existing trading regulations with respect to trade with other socialist countries;³²¹
- c) an undertaking that any changes in these regulations and extensions of their coverage would not impair her commitments, discriminate against or otherwise operate to the detriment of contracting parties;
- d) an undertaking by the cps maintaining discriminatory prohibitions and quantitative restrictions not to increase the discriminatory element in these restrictions and to remove them progressively by the end of 1975 unless exceptional reasons prevented it;
- e) biennial consultations to review the operation of the protocol, the evolution of Hungarian trade with the contracting parties, and changes in foreign regulations;
- f) possibility of discriminatory safeguard action against Hungarian exports;
- g) procedures for the suspension of concessions or other obligations to the extent considered necessary in case of disputes not settled in consultations.³²²

From the previous discussion of GATT experience with the socialist States, it is clear that GATT has demonstrated its flexibility and a measure of neutrality in handling the dispute over the participation of the planned economies to the GATT system. Although GATT is a typical institution of sovereign States, it assumes some of the characteristics of a standing organization serving essentially as a multilateral treaty to provide for periodic negotiations and for the accessions of new participants. At least, it has not presented itself to socialist States as a rival organization despite its western origin and essence.

C. Evaluation Of GATT Experience With East European Countries

In the negotiations for the accession of the State trading countries, the cps were faced with problems arising from the fact that the foreign trade of these countries was conducted mainly by State enterprises and that the foreign trade plan, rather than the customs tariff, was the effective instrument of State trading commercial policy. The customs tariff was applicable only to a part of imports effecting private persons for their personal use and was in the nature of a purchase tax, rather than a customs tariff. The governments of Poland, Romania and Hungary respectively³²³ gave an undertaking that they would grant to the contracting party, in respect of imports into their countries and purchases by their agencies, treatment no less favourable than that accorded to any other country. GATT experience with the East European State trading countries, however, revealed that the application of the non-discriminatory principle to socialist States was subject to some exceptions, as is discussed in the following part of the research. The reciprocity of non-discrimination depended in fact on a mutually

acceptable agreement on concessions.³²⁴ Karin Kock points out, if reciprocity is a function of certain pragmatic measures which ultimately depend on the will to agree, the MFN principle may be an anachronism.³²⁵

1. Import Commitment

The first exception to the principle is that when they joined GATT, the East European State trading countries (with exception of Hungary) undertook import commitments for the compensation of tariff concessions made by GATT members as "entrance fee".

a. Poland.

Poland applied for accession to GATT as early as March of 1959 and became a full member in 1967.³²⁶ For the first time the cps faced with the problems involved in socialist States' accession to GATT.³²⁷ One of the major features of Poland's Protocol of Accession is that it provided for an undertaking of Poland to increase the total value of its imports from the territories of contracting parties by not less than seven per cent per annum. Should Poland subsequently modify this commitment without the agreement of the cps, the cps for their part would be "free to modify equivalent commitments".³²⁸ The bottom line of this formula is that it was based on the exchange of Poland's import commitment for tariff concessions from partner countries, namely, a seven per cent figure was designed to equal the increase in Poland's exports expected from the operation of GATT and from the tariff and other concessions by the cps.

Designed primarily to guarantee market access for exports from the cps to Poland, this formula is attractive because, first, the import commitment is simple and easily verifiable; second, the importing country may decide its own import priorities due to the aggregate character of the commitment; and finally, the cps would be able to increase their exports as if importing countries were reacting to reductions in import restrictions.³²⁹ However, it suffers major weakness as follows:

- 1) Theoretically speaking, the import might all have come from one country, and therefore, the formula can not guarantee that there will be no discriminatory treatment between the cps. It leaves open the possibility of discrimination between imports from the west and those from socialist countries. In fact, a major topic in the outline for annual reviews of the Protocol is the geographical distribution of Polish trade.
- 2) The commitment is to be evaluated on the basis of current dollar prices and no inflation clause is provided in the Protocol for adjustments for the function of the dollar vis a vis other currencies. Thus, its value and burden will be eroded by inflation and increased by deflation. Moreover, since it is expressed in nominal terms, the value of the commitment may suffer from the manipulation of the exchange rate by the state.
- 3) The formula discourages rather than encourages decentralization and other economic reforms that increase the role of market forces since it depends on

administrative measures and State control to guarantee the fixed import target. This contradicts GATT philosophy as well as the interests of the cps.³³⁰

- 4) The annual target may prove disincentive to increase imports beyond the amount, since an over-fulfillment in one year will increase the base and therefore the level of the next year's target.
- 5) The formula lacks a direct link between the Polish export and import performance. Poland suffered from permanent balance-of-payment pressure. Attention should have been paid to the balance-of-trade criterion of reciprocity.

b. Romania

Romania refused to accept any type of arrangement that was based on an obligation to increase imports from GATT countries. In its Protocol, Romania, as described previously, undertook to develop and diversify its trade with the cps and stated its "firm intention" to increase its imports from the contracting parties as a whole at a rate not smaller than the growth of total Romanian imports provided for in its Five-Year Plan.³³¹ This "firm intention" has been interpreted as a declaration rather than a commitment of Romania's concessions included in GATT.³²² This formula, nevertheless, linked Romania's imports with its exports. It was consistent with her claim to developing country status. As Kostecki points out that GATT should not expect less developed countries to make contributions that are inconsistent with their development needs.³³³

The Romanian commitment made a distinction between imports from the cps and total Romanian imports. This seems to mean that Romania would not adopt discriminatory measures against imports from the cps. However, it has been interpreted as a 'fair share' of total Romanian imports.³³⁴ Actually, even if Romania fulfilled the commitment, it did not guarantee that there was no discrimination. The use of planned total imports as the basis rather than actual total import growth would possibly reduce the share of the cps. Only in the absence of discrimination, the cps would increase their exports at a faster rate than non-cps.

Another three observations may be made. First, the commitment in the Romanian formula cannot be enforced ultimately. It is hardly possible to determine whether a country has been "firmly intended" or not since it involves determining the country's state of mind. And the obligation to "develop and diversify" its trade is a vague expression. Second, the fulfillment of the commitment cannot be determined until the end of the Plan period. Finally, there is no mechanism to verify non-discriminatory treatment of trade among the cps except by examination of the geographical distribution of trade through the biennial consultations provided for in the outline.

c. Hungary

Hungarians argued that under their New Economic Mechanism, the customs' tariffs constituted a main protective element in their foreign trade system, and therefore they should not be denied non-discriminatory treatment on the basis of their social system. Unlike Poland and Romania, Hungary negotiated

on the basis of tariff reductions as exchange for the extension of non-discriminatory treatment, as is normal for market economies. Tariff reduction was accepted as a concession, and no special obligations were imposed on Hungary. However, the report of the Working Party did take note of an intention of the Hungarian government "to increase its imports from contracting parties".³³⁵ This reflected the scepticism of some cps towards the Hungarian tariff approach. They feared that the effectiveness of the Hungarian tariff could be weakened by some domestic measures, such as quotas and restrictions on free price formulation. They insisted that import commitment along the lines of the Polish solution be imposed so as to ensure reciprocity, at least during the initial period.³³⁶ It was assumed that there might be other reasons that had an important impact on the final decision of western governments.³³⁷

To sum up, the application of non-discriminatory treatment of General Agreement in tariff reductions to socialist States is conditional. It included in the Protocols either an obligation to increase imports from the contracting parties at a fixed rate per annum, as in the case of Poland, or a declaration of intention to increase those imports at a rate not smaller than the growth of total imports, as in the case of Romania. As for Hungary, the success of its accession constitutes a somewhat different exception. It had reformed its economic system to the effect that tariff played a major role in protecting foreign trade. Under this condition, the cps reached the reciprocity with Hungary. This is a symmetric reciprocity formula as traditionally adopted in the negotiation of tariff-protected members of GATT.

2. Discriminatory Quantitative Restrictions

The second exception is that the cps have imposed discriminatory qrs upon the three countries. The cps were concerned very much about the possibility that socialist States would disrupt their markets by exporting large quantity of low-priced products by virtue of some measures peculiar to the socialist economic system which, as such, was not subject to GATT regulation. To avoid the flood of exports, some cps insisted that discriminatory qrs be maintained, at least, for a time. They contended that the qrs had been historically imposed on Poland, Romania and Hungary and that their sudden removal would cause such economic consequences that it was impossible to do so. The availability of unique socialist trading means to influence the volume and price levels of trade which made the cps unable to determine with certainty what practice socialist States were engaged in was also said to justify their maintenance of discriminatory qrs on those countries. Furthermore, as observed by Patterson, the reluctance of the East European countries to recognize the EEC as a legal entity in the U.N. constituted another important reason for imposing qrs on the socialist States.³³⁸

Discriminatory qrs, however, were of no less importance to Poland, Romania and Hungary. They insisted that the discriminatory qrs be eliminated immediately, as they were in violation of both the letter and the spirit of GATT. They argued on the ground that one of their main purposes of participation in GATT was to eliminate discriminatory qrs on their exports.³³⁹ In addition, there were such countries as the U.S., Japan, Canada and Australia, which did not maintain discriminatory qrs, strongly supported the socialist States' requirement for immediate elimination of the qrs. Thus, qrs were prejudicial not only to

the three countries but also to some of the GATT cps.³⁴⁰ Furthermore, maintenance of discriminatory qrs would certainly lead to bilateral negotiations between Poland, Romania and Hungary and some western countries, notably the EEC countries. This would necessarily cause the conclusion of bilateral agreements, contradicting the goals of GATT.

Polish, Romanian and Hungarian protocols for accession permit the cps to apply to imports from these three countries prohibitions or quantitative restrictions which are inconsistent with Article XIII of GATT, provided that the discriminatory element is not increased and is progressively relaxed so that at the expiry of a transitional period, the length any inconsistency with the provisions of Article XIII will be eliminated.³⁴¹ Hungarian and Romanian protocols establish the end of a transitional period on 1 January 1975. If, for exceptional reasons, any discriminatory restrictions are still in force at the end of the transitional period, they should be subject to the scrutiny of GATT and be eliminated as soon as possible.³⁴² During the negotiations, Poland did not agree on the above escape clause, as such, no termination date was established at the time of Polish accession.³⁴³

Provisions on the use of discriminatory qrs in the three accession protocols were so controversial that in all cases only vaguely worded provisions could be agreed upon. Consequently, each side was left with the right to maintain its own interpretation. Disputes over interpretation were then inevitable.

The principal dispute involved the time table with which elimination should start. Poland, as noted above, failed to

set a final date for the transition period, at the end of which complete elimination of qrs was to be achieved. As a result, some cps refused to begin the elimination of their qrs until such date was agreed upon.³⁴⁴

Although a termination date for the transition period was included in Romanian protocol, it was only an "objective", rather than an "obligation", to eliminate the qrs on January 1, 1975.³⁴⁵ Moreover, the final date was conditional on the so-called "exceptional reasons" with a "limited number" of restrictions which, subject to scrutiny by a Working Party, could still remain effective thereafter.³⁴⁶ In reference to the effectiveness of the provisions, Patterson stated that, "in the absence of clear definitions of 'a limited number' and 'exceptional reasons', the right to maintain qrs after 1 January 1975, effectively nullifies any obligation for removal. In fact, discriminatory restrictions on Romanian imports continue today, eleven years after the 'termination date'".³⁴⁷

Hungarian protocol contains no explicit date of complete elimination. However, it requires notification of and examination of any qrs which remain after 1 January 1975.³⁴⁸ Those still maintaining qrs have obligations, in their notifications, to list products and to specify the type of restrictions, value of trade, and the measure adopted with a view to their elimination.³⁴⁹

Another dispute centers on whether increases in the size of quotas fulfill the requirement. Although the Romanian Working Party on accession noted in their report that "not only the abolition of such quantitative restrictions but also quotas should be taken into account when considering progress toward the

elimination of restrictions".³⁵⁰ It is believed that to-date there is no uniform or generally accepted interpretation about this question.³⁵¹

In addition to the draft problems of protocols, GATT, in practice, was also, to a great extent, unsuccessful in carrying out the task to eliminate the discriminatory quantitative restrictions maintained by some west European countries on the exports from the East European State trading countries. Poland, for instance, suffered considerably from the west's discriminatory qrs during its membership of GATT. It stressed that its trade deficit with developed countries was due, first and foremost, to the discriminatory qrs.³⁵² The west European discriminatory qrs were so burdensome for Polish exporters that Poland's exports increased substantially in many cases when relaxation was made.³⁵³ The best example is Poland's exports of machinery to GATT markets. The trade liberalization measures undertaken by the West European countries led to Poland's thirty-seven per cent increase in the product in 1969-70.³⁵⁴

Poland considered that the end of 1974 would be a reasonable time to close the transitional period. The west European governments, however, refused to agree on a final date of elimination on the grounds that no necessary relation between the performance of Poland's import commitment and the establishment of a transitional period could be perceived and that the economic circumstances that led them to make the discriminatory qrs still existed. Although Poland submitted the question to the attention of the GATT members twice: once at the Council meeting, the other at the Session of the Contracting Parties, no solution could be agreed upon.³⁵⁵ The progress

towards elimination of qrs on Polish exports was very slow, although relaxation could be noted during the first three years.³⁵⁶

Some important relaxation of discriminatory qrs was made by some western countries, though it was not much to the credit of GATT, but largely due to bilateral arrangement made by each of these countries with Poland.³⁵⁷ Indeed, bilateral agreements seem to be the most efficient means of removing the discriminatory qrs in the west. As Patterson observed "the issue of discriminatory qrs is, more than any of the other issues before us, a bilateral one, no two cps have all the same qrs. No two NMEs face all the same restrictions. And, more important, each cp perceives the risk of market disruption and need for qrs differently. This has led to the suggestion that the protocol provisions on discriminatory qrs would be a series of bilateral trade agreements".³⁵⁸

Nevertheless, socialist States insisted on a multilateral solution rather than on bilateral basis. It is obvious that bilateral agreements contradict the multilateralism advocated by GATT rules.³⁵⁹

As for Romania and Hungary, although the cps had promised to eliminate the discriminatory qrs from 1 January 1974, the slow removal of these restrictions made the two countries uneasy. Only some symbolical relaxation was made by the end of 1974 and many substantial restrictions are still in existence against the two countries.

In a word, GATT has not provided an efficient method for elimination of the western discrimination against Polish,

Romanian and Hungarian exports. Discriminatory qrs are a subject of considerable controversy and divergent opinions and there seems no better solution to the question at present. Some Western countries still insist on maintaining discriminatory qrs for a long time. The socialist States, to make it worse, have no effective instrument to push their demands for elimination of discriminatory qrs in the GATT system.

3. Special Safeguard Clause

The accession protocols of Poland, Romania and Hungary each further provide for bilateral consultations in cases of growth of imports exceeding the adjustment capacities of the domestic producer with the right, if no solution is reached, to selectively apply safeguard measures for such time as necessary to prevent or remedy injury.³⁶⁰ This special safeguard clause constitutes another exception to the principle of non-discrimination.

Under the Polish protocol, if any products being imported from Poland into the territory of a contracting party" in such increased quantities or under such conditions as to cause or threaten serious injury to domestic producers"³⁶¹ and if consultations do not result in agreement between Poland and the cps concerned, the cps will be free to restrict imports from Poland of the product concerned to the extent and for such time as it is necessary to prevent or remedy the injury".³⁶² In that event, Poland will be free "to deviate from its obligations to the contracting party concerned in respect of substantially equivalent trade".³⁶³ According to this protocol, the special safeguard clause is not reciprocal, i.e., the cps are

free to use it against Poland, but Poland is not free to do it in return. However, the special safeguard clause is reciprocal in the protocols of Romania and Hungary.

The special safeguard clause is similar to that provided for in Article XIX of GATT. However, under GATT obligations, concessions are suspended or withdrawn in relation to all exporting countries of a specified product, while the special safeguard clause and the protocol may be applied to an individual country, even if the country is not the only exporter on the market.

The special safeguard clauses are so disadvantageous for Poland, Romania and Hungary that the mechanism for trade between the market economies and socialist States would be greatly improved if these were eliminated. But they are the only countries subject to the special safeguard clause, and they have little means of retaliation. It would be difficult for them to eliminate the special safeguard clause, because it has legally substituted the discriminatory qrs which are in conflict with GATT rules. For instance, Hungary accepted this clause on the basis of explicit understanding that it would help to remove the discriminatory qrs early. It is no doubt their understanding that the special safeguard clause obviously excludes any necessity for discriminatory qrs.

To the cps, this special safeguard clause was considered of such particular importance in promoting the active development of trade with socialist States and coping with certain peculiarities of the State trading systems that many cp governments relied on it as a sort of special protective mechanism against the alleged market disruption. Nevertheless, the introduction of such provisions was only based on the assumption that due to their

economic systems, exports from the three socialist States would cause great market disruption or serious threat of disruption. Actually, the assumption has not come true as evidenced by the fact that no specific clause has ever been used. In fact, as Patterson stated that the regular safeguard provisions and consultation provisions of GATT were themselves adequate protection.³⁶⁴

In short, GATT's safeguard framework was changed to fit the conditions of trade between the market economy and the socialist States so as to allay the worries of the cps with respect to possible market disruption by low-priced products from socialist States.

D. Summary And Comments

An analysis of socialist trade theory and trade systems reveals that they are not in harmony with the principles of the General Agreement. The traditional socialist theory of trade emphasizes State's monopolization of foreign trade for the purpose of protecting socialist States from penetration of capitalist economies as well as developing national economies. Self-efficiency is the goal. In short, the traditional socialist trade theory is of the character of protection.

According to this theory, it is the plan rather than price that determines production. Price is not necessarily related to the production. The quantities produced are not influenced by price but are stipulated by planners who have previously set economic goals for the country and are seeking the correct allocation of resources to reach these goals. Price is set to clear the market.

Plan determines not only production but also imports. Planning authorities determine imports according to their evaluation of the volume and composition of imports that will best serve domestic objectives. Though the evaluation may sometimes be based on the theory of comparative advantage, it is more frequently viewed as compensation for temporary domestic shortages of particular products.³⁶⁵

It is clear that under this system tariff rates play limited role on imports. Tariff concession from a socialist State does not necessarily mean an expansion in imports since the level of imports is determined by the plan. Moreover, it cannot guarantee that commercial considerations will be strictly followed by planners in determining the origin of imports, for commercial policy is often influenced by political considerations. Consequently, imposing identical tariffs on imports from all countries does not necessarily mean that the commitment of non-discriminatory treatment is fulfilled.

On the contrary, GATT is mainly a system on tariff, which is based on the principle of non-discrimination. Under that system, import and export are expected to be conducted by private firms. In other words, importation and exportation are based on the principle of commercial considerations, i.e., to be stimulated by profit motive. The decisions of importers and exporters are determined by the relation of domestic prices to foreign prices. A fundamental function of non-discriminatory principle is that tariffs alone play important role in trade. Considering the GATT's limitation in applying this principle to trade with countries having the same systems, its inherent weakness and numerous exceptions, it is hard to apply non-discriminatory principle to trade between socialist States and western countries.

The specific provisions of GATT on State trading are addressed only to the problem of discrimination. Furthermore, they were drafted without taking into consideration of socialist trading systems. It is very difficult, if not impossible, to adapt them to trade with State trading countries.

In a nutshell, theoretically speaking, the non-discriminatory principle of GATT is a concept based on the system of free market economy, which completely contradicts that of socialist States and therefore is hardly applicable to trade between socialist States and the market economies. As the embodiment of the principle, Article XVII is also problematic if adapted to East-West trade.

Nevertheless, as advocated by Professor Dam, only when law is understood not as a set of prohibitions but as a set of procedures to be used in reaching agreements can it become an effective force in world affairs. The problem of principle did not prevent GATT from trying pragmatically. Non-discriminatory principle was applied as an exception to the trade between the cps and socialist States. In the practice of its integration of socialist States into the international trade system, GATT has mainly done two things, i.e., to provide a special formula for socialist States to accede to GATT system and to make special arrangement for products imported to the cps.

Under the respective protocols, the reciprocity formula for Poland and Romania was on the basis of quid pro quo. Poland had an obligation to expand its imports from the cps globally by seven per cent a year. Claiming to be a developing country, Romania entered GATT under the term which provided that Romania should increase its imports from GATT area at a rate not smaller than

planned for total Romanian imports. Because of its economic reforms, i.e., New Economic Mechanism, Hungary claimed its tariff as the effective instrument of trade control and declared its internal markets 'sufficiently' competitive. Hungary was allowed the entrance to GATT under the similar terms to those of free market economies. In this case, Hungary followed the model of Yugoslavia. However, it was said that recognition of the Hungarian tariffs as an effective instrument had a significance far beyond technical considerations. The political dimensions of the issue certainly had an important impact on the final decision of western governments.³⁶⁷

This approach of GATT was, in fact, an exchange of tariff reduction by the market economies for import commitment from Poland and Romania. This practice of reciprocity was nothing new. As early as in the 1920s, many bilateral trade agreements signed by the Soviet Union with some western governments contained this type of reciprocity formula, which provided for tariff reduction by the market economies for import expansion on the part of the planned economies. These arrangements usually had safeguard clauses that supplemented this type of formula by providing that the application of tariff concession might be suspended under condition that the planned economy did not make the purchase expected.³⁶⁸

The American Suggested Charter was the first multilateral agreement that attended to extend the bilateral reciprocity arrangement to a multilateral framework by introducing a global commitment clause, under which a socialist State would negotiate its purchasing plan periodically with market economies. Therefore, it was expected that tariff concession on the multilateral side would be exchanged for a global import expansion

from socialist States. This idea influenced the provisions of the Havana Charter on State monopolies as well as the proposals put forward in the late 1950s, when the matter of East-West trade aroused new interest.³⁶⁹

This solution of GATT was virtually based on the agreement reached in the U.N. that effective reciprocity and mutual advantage should be measured in terms of concrete and comparable results, i.e., the increase in the volume and composition of trade between countries with different systems which would satisfy the trading partners.³⁷⁰

Since the accession of socialist States to GATT, there has been dynamic growth in imports from the GATT countries, especially by Poland and Romania. These imports, in many cases, increased faster than the cps' imports from Poland and Romania. It is obvious, by the standard of balance-of-trade, that reciprocity formula has not been beneficial to Poland and Romania within the framework of GATT. Moreover, the protocols have not forbidden discriminatory qrs, and GATT has failed to bring some of the cps, mainly the west European countries, to eliminate their discriminatory qrs on the East European exports. GATT was, to a large extent, unsuccessful in fulfilling this task, which is very important for the normalization of trade relations between East and west. The issue may be solved outside GATT through bilateral means. This obviously contradicts GATT multilateral principle.

The main motive underlying the three countries' interests in accession to the General Agreement is, as noted above, to eliminate discriminatory qrs on their exports in the western countries. It was hoped that participation in GATT could provide an opportunity for an early solution of the problem, since they

were contrary to the provisions of Article XIII of GATT. However, the desire was met only with partial satisfaction. What is more important, GATT did not deal with this problem seriously. As Dam argued that despite the agreement on concessions, the problem of non-discrimination in the actual allocation and administration of Poland's imports was not dealt with in the Protocol.³⁷¹

The question of non-discrimination in East-West trade, to a large extent, was left to consultation forums, which alone, however, are often insufficient to force an adjustment, especially when important trade interests are involved. A good example of this is the case with GATT's unsuccessful establishment of the final date for elimination of discriminatory qrs on Polish exports. In this respect, the informal consultations and negotiations provided a more frequent way of solving problems than the formal GATT procedure.³⁷²

The trade relation between western countries and socialist States would be greatly developed if the special safeguard clauses are eliminated. In fact, imports from socialist States have been neither the cause of severe market disruption nor serious threat of disruption. Available information indicates that the only consultations under the selective safeguard provisions concern the 1976 European Community consultations with all the State trading countries on electric motors and filament lamps. This is in sharp contrast to the vast array of discriminatory qrs.

Despite these problems, however, GATT has promoted the development of East-West trade. Exports of GATT countries into socialist States have increased substantially during recent years, although socialist States exports to the west have not grown sufficiently to finance those countries' import spending. The

cost and benefit analysis of the deal shows that it will be beneficial for both sides. Socialist States want to attract western technology, management, and financing to their countries. western countries, on the other hand, hope to sell their goods or to invest their capital in the markets of socialist States. That is why both socialist States and the cps have the desire to develop the relationship. However, much improvement is needed so as to reach this goal.

E. Proposals For Improvement

Recognizing the unsatisfactory experience with GATT of socialist States, scholars and experts have put forward many proposals concerning the import commitment with the aim to improve the existing GATT arrangement. These proposals may be summarized as follows:

- 1) The elimination of the remaining discrimination against the socialist States imposed by the cps of GATT may be accelerated if each of the State trading countries chooses certain amount of importable products of particular interest to its main GATT partners and negotiates concessions on its respective one commodity import targets. This would mobilize those western industries especially interested in these particular openings to support the demands of Poland, Romania and Czechoslovakia for reciprocal import openings by some western governments.³⁷³
- 2) To link the growth in imports from all GATT contracting parties to total imports so as to guard against discrimination in favor of non cp socialist States.

- 3) To help ensure national treatment, growth in imports from the cps should also be linked to GNP in socialist States. Price of imports should be fixed by States at the level of similar domestic products, and taxes, transportation, distribution, and other charges are applied to all foreign and domestic goods and services.
- 4) To help ensure reciprocity, increase or decrease in imports should be linked to increases or decreases in export earnings.
- 5) To avoid excessive erosion or enhancement of the worth commitment expressed in terms of value, the target should be adjusted for major changes in price levels.
- 6) The formula must allow for the "graduation" from the requirement of strict compliance with the import commitment as the State trading countries adopt a customs tariff, more market-oriented policies and decentralization measures which make fulfillment of an import commitment less appropriate, less necessary and less within the control of government.³⁷⁴

Based on the experience of GATT with some State-trading countries, these proposals may be workable and considered by the State trading countries and the GATT members to represent equitable compensation for the benefits. It can not ensure, however, more extensive participation of GATT. It has not provided a final solution to the problem of integration of the State trading countries into GATT. Even if they may be effective in the expansion of trade with small or medium socialist States,

they are hardly workable to big powers such as China and the Soviet Union. The General Agreement was drafted at a time when the Soviet Union was the only State trading country and it did not take part in the preparations for the General Agreement. Any discussion on improvement of GATT arrangements towards East-west trade cooperation at present should bear in mind the possibility of this eventual more extensive participation of all socialist States. General provisions explicitly referring to the State trading systems should be added to the General Agreement, particularly as a significant amount of world trade now involves socialist States. Their systems as alternative methods of organizing a country's foreign trade should be recognized.

In this respect, GATT is even less satisfactory than the Suggested Charter and the Havana Charter. In the former, there was a whole section devoted to the rules which would apply both to State agencies and to private firms, which had been granted to exclusive or special privileges in foreign trade. These provisions were applied to mixed economies. In addition, it also contained special provisions on State trading countries in the special article on "Expansion of Trade by Complete State Monopolies of Import Trade".³⁷⁵ The leading principle, as formulated in the Havana Charter, was that the State trading enterprises should, in their foreign trade, apply the general principle of non-discrimination. As an agreement on a bound import duty could be evaded by the monopoly increasing the domestic price, a rule was inserted that in this case negotiations should aim at establishing a maximum import duty, defined as the margin between domestic price and the landed cost.

With the participation of socialist States, GATT should introduce new provisions on the principle of non-discrimination, taking full consideration of socialist States' system.

Furthermore, an effective reciprocity arrangement should be made. Provisions on dumping, market disruption and safeguard clauses should be applicable to the conditions of socialist foreign trade systems. It is obvious that in order to better accommodate socialist States, major GATT reforms will be needed. This idea, however, has been opposed by some scholars.³⁷⁶ Indeed, this approach might put socialist States in a special, less favorable status because they are not in a powerful bargaining position and lack the necessary instruments for solving discrimination. At present stage, it may be impossible to propose any major amendment to GATT, not only would most western countries oppose this idea, but also socialist States would not insist on doing so.

A possible method of solving the problem of market access in trade between socialist States and the GATT members would depend on the economic reforms being carried on in socialist States. That is to say to adopt the traditional tariff approach of GATT, as, for example, done by Yugoslavia and Hungary. Massive reforms currently are underway in socialist States, which are aimed at both introducing market forces into their domestic economies and decentralizing their foreign trade activities. There is a tendency in socialist States towards replacing target by tariff protection. The economic reforms in many socialist countries have involved decentralization of both planning and foreign trade monopoly institutions. Consequently, there is appearing a closer automatic link between domestic and foreign prices, and customs tariff has been applied as supplement instruments of trade control.

This idea has gained support in GATT. The success and extent of these reforms will significantly affect their future accession to GATT. The GATT members will work out satisfactory arrangements

for their accession, depending on the degree of decentralization in socialist foreign trade systems.

Nevertheless, as they pursue the market-oriented reforms noted above, these countries continue to call themselves socialist States with the planned economy as principal economy. China is a typical example.³⁷⁷ It seems impossible for the socialist States to change completely their planned economy. One point unclear in the current reform trend is how much emphasis will be put in the future on planning and how much on market policies. It seems that there will be little opportunity for the economic reforms to resolve the market access problem if the central plan is comprehensive and mandatory. If the plan is only indicative, limited to specific sectors, it is possible for GATT members to believe that socialist economy will eventually develop sufficiently to fulfill GATT obligation and to accept it as the tariff protected economy.

In order to further encourage economic reforms and to expand participation in GATT activities, it is necessary that the conditions of accession by socialist States to GATT should be sufficiently flexible to allow their fuller involvement as their economies develop. In addition, there should be included special arrangements for "graduation" in every respect so that, along with their economic and trade reforms, socialist States can gradually assume GATT obligations and enjoy certain GATT benefits.

It is widely believed that GATT experience with those socialist States, except Yugoslavia, has been generally unsuccessful. Import commitments and other assurances by the States in question have not provided the reciprocal trading opportunities and the GATT practice in integration of the three

socialist States into the world trade system could hardly provide any experience for China's accession. China's vast size and its much greater potential capacity of trade make GATT members cautious in establishing relationship with China. Both China and GATT would not like to consider an import commitment as the proper basis for China's accession, due to its inherent weakness and China's characteristics. The following part will concentrate on China's case.

V. CHINA AND GATT

Since 1980 China has been considering the pros and cons of GATT membership. However, China has been very cautious. A step by step approach has been followed by the Chinese government. In 1982, China expressed its interest in participating as observers in GATT cps meetings³⁷⁸ and was granted the status in GATT.³⁷⁹ In 1982 and 1983 China sent representatives to attend the GATT sessions.³⁸⁰ To learn advantages and disadvantages of GATT membership. Chinese officials had attended GATT commercial policy seminars held in Beijing and Geneva before it was granted observer status.³⁸¹

On 15 December, 1983, China become a signatory to the Multilateral Fibre Agreement (MFA) a multilateral textile agreement implemented under the auspices of GATT.³⁸² This move was considered one of the steps adopted by China to get further experience with multilateral trade organizations.³⁸³ In fact, China's joining in the MFA facilitated its efforts of furthering closer relations with GATT. In 1984, China obtained special observer status in GATT and was able to attend meetings of the GATT Council and other subsidiary GATT bodies.³⁸⁴ On July 10, 1986, China made the formal application to the GATT Director

General for GATT membership,³⁸⁵ and in February, 1987 it submitted a memorandum on its foreign trade regime.³⁸⁶ A Working Party on China's accession was then formed by the GATT cps for considering China's application.³⁸⁷ Substantive negotiations have since been conducted between China and the GATT members.³⁸⁸

China's request for GATT membership raises some problems legally and economically. The GATT game is played mainly among the market economies and China now is a "planned market economy" or "planned commodity economy". Moreover, the Chinese have argued for a resumption of its previous membership, but some of the GATT members have insisted on a new accession.

China's traditional centrally planned trade system took its shape during the 1950s. This traditional system was based on the theory of a product economy with rigid planning control, which is flatly contradictatory with the theory of GATT. However, the reform in the ten years has brought about drastic changes in China's economic structure and its operational mechanism. The changes feature a transition from a highly centralized administration, from direct administration of trade to a system of different levels of administration, from direct administrative management of enterprises to indirect administration through economic levers, and from an operational mechanism of the economy entirely regulated by planning to a system which integrates market with planning. In their own parlance, China is in a transition from the traditional model of product economy into one of planned commodity economy.

Following an analysis of the evolution of China's trade systems from a centrally planned economy to a planned commodity economic and a comparison of the two systems with that of GATT,

China's motivations for and positions to GATT membership and the problems raised thereby are discussed, different views regarding China's membership of GATT appraised, and proposals presented.

A. State Trading System In China

1. Government Monopoly Of Foreign Trade

Since the founding of the PRC in 1949, an orthodox system of a planned economy had been followed.³⁸⁹ The traditional concept was that only planned economy was compatible with socialism and that market economy could not exist.³⁹⁰ The trading system under the planned economy, like the model of the Soviet Union,³⁹¹ had two distinctive characteristics. First, the State monopoly and central planning were its main features.³⁹² Second, there was a relatively stable institutional framework in charge of the formulation and implementation of foreign trade policy. As Chinese sources put it: "From the fifties up to 1978, we practically applied this system even though some minor changes were introduced to some of its prescriptions".³⁹³ After 1956 foreign trade became monopolized under the former MFT by the national import-export corporations, and their branches located in Guangzhou, Shanghai, Qingdao, Tiangin and Dalian. After 1973, were added some more port cities of Jiangsu, Henan, Hubei, Hunan, and Yunan Provinces. China's State monopoly of foreign trade system was established in the regained process of socialist transformation. Immediately after the establishment of the PRC in 1949 when China became an independent sovereign State, it started about putting an end to all the privileges and prerogatives of foreigners in finance, maritime transport, insurance and merchandise inspection and regained control over her customs. China further controlled over her foreign trade by taking over the

foreign trade enterprise in China and creating the necessary instruments and institutions.

In the early 1950s while private import-export enterprises were permitted to carry on their business, over a dozen of national import-export corporations were set up by the State. A registration system was established by requiring all domestic import and export companies to register with local foreign trade departments. Foreign firms had to first obtain recommendations from local department of foreign affairs and approval by the Ministry of Trade before they were allowed to register for operation in designated places.

There were several general categories of imports and exports in the early 1950s. By the adoption of the system of import and export licenses, the State could bring all private foreign trade enterprises under its control. Designated official foreign exchange banks were responsible for payments. Instead of by legal means to confiscating alien interests, China, by various measures of socialist transformation, such as the control of payments, bank credits, sources of supply and labour, etc., successfully made almost all foreign companies stop operation by 1956.³⁹⁴

The State monopoly of foreign trade was conducted rapidly. The members of private export-import companies and their employers, as well as the amount of their turnover were reduced quickly.³⁹⁵ The proportion of total foreign trade conducted by the State rose from sixty-one percent in 1950 to ninety-nine percent in 1955.³⁹⁶ Since 1956, foreign trade had been a state monopoly until 1979.

By converting Chinese owned private import and export companies and industries into State or joint State private

enterprises, the State was able to take full control of the management and private import and export companies. Nevertheless, the shareholders of the companies were still allowed to receive fixed dividends at a rate of five percent annually of their original investment and irrespective of the actual earnings or losses of the enterprises.

The nationalization of private foreign trade enterprises was officially justified by the Minister of Foreign Trade as follows: "(a) to safeguard the absolute leadership of the Communist Party in the foreign trade field, (b) to consolidate the independence of China's foreign trade and (c) to guarantee the planned development of foreign trade under the policy and guidance of the Party".³⁹⁷

2. Planning

China's traditional centrally planned economic system was based on the provisions of the constitutional law. Article 15 of the 1954 Constitution provided that: "By economic planning, the State directs the growth and transformation of the national economy to bring about the constant increase of productive forces, in this way enriching the material and cultural life of the people and consolidating the independence and security of the Country".

Under the same Constitution, the National People's Congress (NPC) had the power to "decide on the national economic plan (Article 27) and the State Council was responsible for formulating and executing the plan under the supervision of the Standing Committee of the NPC. After the adoption of the first Five Year Plan, however, the State Council had actually undertaken all basic responsibilities for economic planning, under the authority of the

Central Committee of the CCP. Under the 1975 Constitution, it was still the NPC that was vested with the power to approve the economic plan (Article 17).

Regarding the process of the foreign trade plan, it can be briefly described as: the State Planning Commission first made preliminary estimates and issued initial control figures of imports and exports for long-range and annual plans. The Ministry of Foreign Trade (MFT) then drew up general export and import plans upon the basis of these figures. The State foreign trade companies mapped out their import and export plans in accordance with these general plans. The specific import and export plans must be first examined by the MFT as a constituent of the general trade plan. Then it became part of the national plan, which turned into law after the approval by the State Council. These specific plans were in the form of detailed directives, prescribing the level, direction and composition of every State trade company.³⁹⁸

Inconsistence and bottlenecks frequently appeared under the highly centralized planning. In order to finance the imports, means had to be estimated in accordance with export capacity, world market conditions, domestic demand, the PRC's political relations existing contractual commitments to foreign trade partners, and amount of foreign currency and credits available.³⁹⁹ Particularly when exportable goods were in great demand for domestic use, the planning authorities must decide whether to curb exports or domestic demand.⁴⁰⁰

3. Foreign Trade Organizations

1) Ministry of Foreign Trade. The principal agency for supervision and control of the foreign trade sector was the

Ministry of Foreign Trade, which was set up in August, 1952. It existed under this name until 1982, when it was changed into the Ministry of Foreign Economic Relations and Trade. The Ministry had the sole responsibility for foreign trade until 1979. It planned, coordinated and supervised all imports and exports. Its most important functions were as follows. First, it drew up specific import and export plans, led various trade institutions under it to carry out plans. Second, after the approval by the State Council, it made basic laws and regulations concerning foreign trade. After sanction of the State Council, it promulgated and put them into effect. Third, it was in charge of customs work and quality control for both exports and imports. Finally, it exercised control over the State-owned foreign trade enterprises.⁴⁰¹

A number of State companies were organized under the MFT, each importing and exporting a specific range of commodities or dealing with another specific aspect of trade. Distribution of imports and purchase of exports were carried on by these companies on the basis of a State plan. Trade negotiations were usually conducted by these companies as operating units of the Ministry.

In addition to the MFT and its subordinate agencies, there was the China Committee for the Promotion of International Trade, a government agency allegedly performing the functions of a chamber of international commerce.⁴⁰²

By 1955 every province had established its own bureau of foreign trade. These provincial bureaux, together with those established by local authorities below the provincial level, and those set up at ports, officially came under the joint supervision

of the MFT and of the local authorities concerned. However, before 1979, the regions had no foreign trade companies.

2) The National Foreign Trade Corporations (NFTCs). The National Foreign Trade Corporations monopolized all export and import transactions or services in which they were specialized. The NFTCs were State-owned socialist enterprises and operate under the direct supervision of the MFT. China had six such trade companies in 1950 and sixteen in 1975.

The NFTCs were not consuming or producing units but merely middlemen. They had exclusive rights to conduct negotiations. They drew up and signed contracts and provided a link between Chinese producers or end-users and foreign enterprises. In other words, the NFTCs bought up the domestic products specified in the plan and sold them to contracting parties abroad and parallelly purchased the imports provided in the foreign trade plan and sold them to domestic trading companies or directly to production units.⁴⁰³ In accordance with the instructions of the MFT, they drafted their plans within their specific spheres of activity; they were in charge of the supply of the raw materials and the packaging of the products; they did the market research, and were responsible for trade marks, advertisement and the exhibitions of exported goods; they finally applied to the Bank of China for the foreign exchange settlements and entrusted the transport of the products to the foreign trade transport organizations. In fact, except for the production of the exported good itself, they were responsible for almost everything. In this light, the NFTC's function was like a shield keeping out the influence of the world market, rather than an efficient intermediary.⁴⁰⁴

Indeed, things were arranged in a way that it was impossible for Chinese enterprises to look at foreign price and to decide to

export and import some goods because that was cheaper or more profitable. The result of this policy was, as one commentator observed, "that the Chinese domestic market was separated from the world market for most goods even though the Chinese foreign trade prices were generally oriented towards world market prices. Thus the price, at which a NFTC bought exported products from a Chinese producer or at which it sold imported products to a Chinese end-user, could differ, even at the officially fixed exchange rate, from the price the NFTC paid or was paid for these products on the world market. The difference, positive or negative, was passed on the Ministry of Foreign Trade, which passed it on to the Chinese State Treasury."⁴⁰⁵

In other words, the domestic price system was not related to actual world market prices because the domestic export and import prices were fixed by the central plan. In addition, prices were occasionally manipulated for political purposes or for economic gains".⁴⁰⁶

3) The China Committee for the Promotion of International Trade (CCPIT). China Committee for the Promotion of International Trade was founded on May 4th, 1952. The reason for the establishment was said to counteract western restrictions on strategic exports to socialist States.⁴⁰⁷ Its main function remains in dealing trade with non-socialist countries, especially those having no diplomatic relations with China. With the diplomatic recognition of China from its trading partners from the mid-seventies, its pure trade activities have increased while the diplomatic function is likely to diminish.

The principal activities of the CCPIT were and still are, to enter into nongovernmental trade agreements with foreign partners;

to represent China's foreign trade organization in those countries which do not recognize the PRC; to send trade delegations to both recognized and unrecognized States; to receive foreign trade delegations in China; to participate in international trade affairs; to hold Chinese commodity exhibitions overseas, rendering services to foreign exhibitions in China and to collect and disseminate information concerning international trade. Nevertheless, it does not engage in direct trade activities. Its agreements have no binding legal force, they are just private pre-contracting agreements.

4) Bank of China. The Bank of China is the Chinese foreign exchange bank in trade with non-socialist countries and acts as the overseas agent for the People's Bank of China.⁴⁰⁸

The Bank of China exercised and still exercises the monopoly on foreign exchange.⁴⁰⁹ All economic entities and government agencies maintaining business relations with parties abroad must hold accounts at the Bank of China. All foreign currency transactions are effected via these accounts. Its main function covered the settlement of international trade and non-profit trade payment, RMB and foreign currency deposits, foreign exchange dealings, and bullion buying and selling. Acting as an agency for the State administration, the Bank of China allocates the necessary foreign exchange needed for the import schemes as decided by the plan directives.

4. Comments

China had adopted a highly centralized institutional type of trade monopoly before 1979. Imports and exports were the exclusive domain of State-owned institutions. They were operational units of the trade monopoly. The government

monopolized foreign trade. Those institutions were responsible for drafting and executing the foreign trade plan. Under this system, tariffs did not play a major role in controlling imports and exports, since there was no necessary connection between external and domestic prices. The imports and exports of State trading enterprises were governed by the plans and policies of the State, rather than by the price and quality of commodities. Reducing or eliminating tariffs would not increase imports, nor would such changes necessarily bring about increased market access for foreign products. The prices of domestic goods were separated from those of foreign goods. In other words, imports were bought at world market prices and sold at current domestic prices on the one hand, export goods were bought at domestic prices and sold at world market prices on the other. However, imports and exports should be mainly influenced by tariffs under the system of GATT.

In accordance with GATT rules, the total amount of foreign trade as well as the composition and origins of imports and exports should be mainly the result of decisions made by private traders based on commercial considerations. Governments regulate imports and exports only through tariffs. However, the State plan and its administration by the various trade institutions might create discrimination toward foreign products, because non-commercial factors were often considered when decisions were made. The cps might feel difficult to determine whether China would meet its GATT obligations to provide non-discriminatory access to its markets. Further, since the quantities of imports and exports were strictly controlled by the government through the State's trade plan, fair competition in world trade might be hampered and therefore, discriminatory treatment be caused by the use of quantitative restrictions, which has been generally prohibited by GATT.

Finally, the State trading enterprises in China were accorded monopolies on certain import and export commodities, giving them the power to discriminate between foreign and homecountry residents and among foreigners. This was incompatible with the national treatment of GATT, which forbids the use of internal taxation or regulations regarding distribution and procession to protect domestic production. This monopoly and monopsony could be contributed mainly to:

- 1) The limitation of enterprises empowered to participate in the foreign trade sector (16 foreign trade corporations);
- 2) the strictly-defined non-competitive division by product of the foreign trade corporations;
- 3) the existence of a number of large industrial enterprises.

Several conclusions may be drawn for the maintenance of the centrally planned system for as long as three decades. The first reason is surely the increasing collaboration with the USSR.⁴¹⁰ On the other hand, this system was considered in accordance with the traditional Chinese preferences for State control over foreign contracts.⁴¹¹ Another reason is that the institutional framework responsible for the formulation and implementation of foreign trade policy had been extremely stable up to 1978. Finally, foreign trade had never been very important quantitative terms before 1970,⁴¹² but remained a minor sector of the domestic economy.

In addition, the western industrialized countries' blockade, as previously described, also played an important role in pushing the Chinese to adhere to this system and to overly emphasize on self-reliance.

B. Bilateral Trade Agreements And Discrimination

Through 1950s and in the early 1960s, China was subject to an economic blockade and embargo as a result of the deterioration of the political atmosphere. In fact, normal trade relations between China and many of the GATT cps ceased to exist.⁴¹³ As previously discussed, a planned economy was set up and a new tariff system introduced in China. China was prevented from active participation in the multilateral trading system in the past. China's trade relations therefore have been conducted through bilateraltrade agreements.⁴¹⁴

At present, China maintains bilateral agreements with 103 countries and regions. According to one Chinese source, these agreements may be divided into three main categories, i.e. (a) bilateral trade agreements setting out general terms and conditions of trade including mutual exchange of the MFN treatment; (b) agreements of general terms and conditions with indicative list of commodities for exchange; and (c) agreements of general terms and conditions supplemented with established volume and value of commodity exchange and arrangement of the settlement of trade balances.⁴¹⁵ first category of the agreement covers China's trade relations with the majority developed GATT members and a few developing countries, such as Singapore, Brazil and Kenya. Trade with many of the developing countries is regulated by the agreements falling into the second category, while the third applies to trade with socialist States.⁴¹⁶

For the convenience of discussion, the three categories of agreements may be further generalized as agreements with countries having same social and economic systems and those with different systems.

1. Trade Agreements With Centrally Planned Economies

China has signed trade agreements or trade payment agreements with almost all socialist countries. Trade between China and other socialist countries is conducted in accordance with the provisions of the trade agreements. It is a kind of trade agreement guaranteed by the governments of both parties. At the same time, China's foreign trade ministry has signed "Common Terms for Delivery (CTD) in accordance with the spirit of the trade agreements or trade payment agreements with the ministries of those countries. The CTD make detailed provisions on questions with commonalities for the State trading companies of both sides.

On the basis of the two kinds of documents, the governments of both parties organize their delegations respectively and negotiate, in turn, in the capitals of both parties on the scope, types, quantity and price formation of goods mutually supplied for the next year. Once an agreement is reached, a trade agreement or protocol will be signed. Based on the annual trade agreement and Common Terms for Delivery, the State import and export corporations of both countries will then hold negotiations over the deal of concrete commodities and sign that year's trade contracts for import and export so as to ensure the implementation of the annual trade agreements. The contents of the annual trade agreements signed by China with other socialist countries are as follows:

1) Assortment and quantity of goods mutually supplied. All the trade agreements signed by China are attached with general import and export lists of goods, explicitly providing for the assortment and quantity of goods mutually supplied. The general goods lists are an indispensable part of the agreement. The general value of goods indicated in the goods lists is that year's trade amount of two sides. This goods lists has greater binding force on two sides. The governments of both sides must guarantee the implementation of agreements. This is one of the principal characteristics of this kind of trade agreements.

Since both sides are countries of the planned economies, it is helpful for both sides to connect foreign trade with the domestic plan if there are provisions on the clause of goods lists in trade agreements. After the establishment of goods lists, however, it is still possible to make necessary amendment or change to the assortment and quantity listed in the general list of goods subject to the agreement of both sides due to the change of conditions.

2) The Principle Of Price Formation. The trade agreements generally provide that the price of exchanged goods by both parties should be based on the price of the commodity on the international market at the time when the contract is signed and fixed through consultation by State-run import and export corporations of both countries.

3) Methods of delivery and acceptance of goods. In this kind of agreement, it is generally provided that the delivery and acceptance of goods should be conducted in accordance with Common

Terms for Delivery and the provisions of import and export contracts.

4) Methods of Payment and Clearing. This kind of trade agreement ordinarily provides that the methods of keeping accounts and settling accounts and clearing by both sides should be adopted to settle accounts. In order to handle the payment for goods mutually provided for and other items of payment by both countries, both parties open trade accounts in each other's state bank to clear payment for goods, payment for freight, freight prepaid by seller, premium as well as other subordinate expenditures.

Trade conducted under this category of agreements is subject to volume plan targets. The price formation is not based on market forces. This trade practice is apparently inconsistent with GATT rules. The specific character of China's trade with other socialist countries poses the question of discrimination not only between China and other socialist States but also between China and the cps.

2. Trade Agreements With Cps

The trade agreements with western countries mainly consist of the following two aspects of contents.

1) Imports and exports quota and import and export commodity lists. In China's trade agreements with developing and developed countries, there are mainly two kinds of provisions on import and export quotas and lists of commodities. In the first condition, the only one or several kinds of main import and export commodities in the list in the agreement are provided with certain quantity and amount of money. It is the governments'

responsibility to implement the provisions. The rest of the commodity lists only list the names of commodities without provisions on quantity and amount of money. The foreign trade enterprises of both parties are left with the freedom to have the deal.

In the second condition, commodity lists are taken as the attached schedule to the trade agreement, in which, only kinds and names of commodities are provided with no quantity and amount of money listed. The governments of both parties are responsible for issuing import and export licenses. In addition, there are a few trade agreements which do not even make provisions on commodity lists and trade amount. The whole process of import and export of commodities is conducted by trade enterprises of both parties themselves.

2) MFN Clause. Most of the trade agreements entered into by China have been provided with the MFN clause. Some MFN clauses apply wider, others smaller. Generally speaking, they apply to the licensing, tariff and the calculation and levy of added tax as well as the procedures of customs. For instance, the Article 2 of Agreement on Trade Relations between the PRC and the U.S.A. provides that with a view to establishing their trade relations on a non-discriminatory basis, the contracting parties shall accord each other MFN treatment with respect to products originating in or destined for the other contracting party, i.e., any advantage, favor, privilege, or immunity they grant to like products originating in or destined for any other country or region, in all matters regarding:

(a) Customs duties and charges of all kinds applied to the import, export, reexport or transit of products, including

the rules, formalities and procedures for collection of such duties and charges;

b) Rules, formalities and procedures concerning customs clearance, transit, warehousing and trans-shipment of imported and exported products;

(c) Taxes and other internal charges levied directly or indirectly on imported or exported products of services;

(d) All laws, regulations and requirements affecting all aspects of internal sale, purchase, transportation, distribution or use of imported products; and

(e) Administrative formalities for the issuance of import and export licenses.⁴¹⁷

Although most of bilateral agreements include the MFN clauses, they often demonstrate provisions which are at variance with either the spirit or letters of GATT. One Chinese writer pointed out that they either contain additional clauses which might nullify its application and conflict with GATT provisions or have a wider coverage than GATT.⁴¹⁸

The above-noted China-U.S. agreement, for example, provides for the right of establishment for financial and banking institutions⁴¹⁹ and the protection of intellectual property.⁴²⁰ Although the recently adopted Uruguay Declaration has provided for the future negotiation of those issues such as services, investment and the protection of intellectual property in the new round of multilateral trade talks, they were, anyhow, previously beyond the scope of GATT.⁴²¹

The discriminatory provisions of the bilateral trade agreement are the reflection of domestic trade law of the U.S. Thus the U.S. is obliged by the domestic law to discriminate against China. Under the U.S. Trade Act of 1974, for instance, China is granted the MFN treatment on an ad hoc basis, pending approval annually inconsistent with both GATT Article I and Article II, 4 of China-U.S. Agreement, which provides that the principles of paragraph 1 of the Article concerning the MFN treatment will be applied by the cp in the same way as they are applied under similar circumstances under any multilateral trade agreement to which either cp is a party. It is clear that the MFN treatment under this article, like Article II of GATT, shall be an unconditional MFN clause and be applied in the same way as GATT Article I.

Moreover, China has been denied the GSP treatment by the U.S. Government on the basis that China is controlled by international communism. As the Chinese source observed that the uncertainty of the MFN treatment would apparently be a destabilizing factor in China-U.S. trade.⁴²²

Under the Trade Agreement between the EEC and China, China is obliged to give favourable consideration to imports from the EEC so as to ensure that Community exporters have the possibility of participating fully in opportunities for trade with China.⁴²³ In return, the EEC undertakes to strive for an increasing liberalization of imports from China. Its formulation, pointed out by this Chinese source, is "such as to assume that discriminatory quota restrictions are the norm in EEC-China relations, and that the EEC undertaking in the bilateral agreement to liberalize progressively such quotas constitutes a concession to China. Such an approach is inconsistent with GATT Article I

on the MFN treatment, Article XI on general elimination of quantitative restrictions and Article XIII on non-discriminatory administration of quantitative restrictions".⁴²⁴

Under Article 4(2) of the Agreement between the EEC and China, the EEC will endeavour to progressively introduce measures extending the list of products for which imports from China have been liberalized and to increase the amounts of quotas.⁴²⁵ This is apparently conflicting with Article XI of GATT which provides for general elimination of quantitative restrictions with exceptions for agricultural and fishing products under strictly defined circumstances. Even if such restrictions are justified by the prescribed circumstances, they must be subject to the rules of Article XIII, which clearly prohibit any discriminatory restrictions on any products from any cps. Therefore, the provisions of these bilateral agreements are at variance with GATT principles. Like other socialist countries, quantitative restriction is one of the important issues that China will endeavour to redress in resuming its GATT membership.

In spite of the increasing trend towards multilateralism, the trade relations of China with both developed countries and developing countries who are members of GATT continue to be based, to a considerable extent, on bilateralism. Even broader moves towards multilateralism are required if the spirit of GATT on multilateral and non-discriminatory trade is to be respected in relations with China.

C. Reform Of Foreign Trade System And Its Compatability With GATT

1. Necessity For Foreign Trade System Reform

The traditional system played an important role during the early period of the founding of new China in mobilizing the financial, material and human resources for the restoration of the national economy and for the construction of priority projects.⁴²⁶ But it failed to adapt timely to the economic development and restricted further expansion of social production. The weakness of this system was best described by one Chinese writer as follows:

It has emphasized monopoly, control and high concentration. Consequently, all import and export trading is centralized and dealt with by the State-run foreign trade corporation. Lacking authority to decide for themselves in operational and financial matters, these corporations have grown accustomed to requesting instructions from high levels, thus introducing red tape into their operations. In managing and supervising business, they care little about loss, wastage and the turnover and application of funds, nor do they pay attention to economic accounting and efficiency. As the head office is far away in Beijing, how can it completely understand the situation in other parts of the country? As result, what should have been interfered with has been left alone and what should have been left alone was interfered with. The fact is that the head office is incapable of supervising the branch office... In reforming the foreign trade system, we should encourage the local initiative.⁴²⁷

Realizing this, China began its foreign trade system reform, mainly by decentralizing the management of foreign trade. To this end, producers, end-users and local governments of various levels are allowed to engage in export and or import. The number of those involved in foreign trade has increased

considerably during the past years. Up till 1986, over 800 import-export corporations had been approved by the Ministry of Foreign Economic Relation and Trade.⁴²⁸

In 1984, efforts were made to further reform the foreign trade system, namely, to rationally regulate foreign trade chiefly by making use of indirect means of control such as exchange rates, customs duties, taxes and credits and so on.⁴²⁹ In addition, the reform of the foreign trade planning system is also an important part of the reform of the foreign trade system.

2. Role Of Planning

The import-export plan remains to be a major instrument in foreign trade control. It is now "an important means of macroeconomic guidance for the smooth development of foreign trade. Its role is to develop exports, to earn foreign currencies and to make effective use of foreign exchange resources as well as to promote a well-coordinated development of the national economy."⁴³⁰

However, the totally mandatory foreign trade planning practiced in the past has been replaced correspondingly by mandatory planning, guidance planning and adjustment through market forces. The aim of the reform in planning is to reduce gradually the proportion of mandatory planning and to extend the scope of guidance planning and adjustment through market forces.⁴³¹ Concerning the coverage of commodities, only those important to national economy and people's livelihood are under mandatory planning. They are oil, coal, grain, cotton, chemical fertilizer, lumber and steel. Most of the other commodities are covered by the guidance planning.

Due to the significant organizational reform as will be analyzed, Chinese entities at central, provincial and municipal levels can have contacts with foreign enterprises. Even the regions may have the power to act independently of the central authorities, when using their "own" foreign exchange, or in those cases where they have the direct responsibility for certain products.⁴³² Foreign trade, therefore, has become more difficult to control through centralized plan.

3. Reform Of Foreign Trade Organizations

The purpose of the reform is to reduce over-centralization and over-administration of the foreign trade system. To this end, departments and enterprises of industrial production and local governments at various levels are allowed to engage in export and or import instead of the centralized management by national foreign trade corporations under the former MFT. Further, producers and end-users are to be closely involved in export and import decisions. Administrative criteria are to be replaced by economic ones. In addition, the responsibilities of the different administrations are being reorganized.

1) Ministry of Foreign Economic Relations and Trade (MOFERT). In 1982, the MOFERT was set up by merging several former national institutions engaged in foreign trade. [The major characteristics of this reform is that the Ministry has been decentralized. The MOFERT has lost some of its direct responsibilities to the industrial ministries. In short, it is still the principal institution in charge of foreign trade.] Drawing up the national trade plan is still one of its significant responsibilities. It has direct responsibility for imports and exports of specific goods and of plant and equipment

within its power. It is also responsible for the coordination of the trade plans of the industrial ministries or the regional administrations. In addition, it has the power to set the prices of goods exported on its own account, to give price formation guidelines or price ranges for the industrial ministries, regional administrations or enterprises.⁴³³ Finally the MOFERT is empowered to permit contractual joint ventures which are above certain amounts, as well as all equity joint ventures.

2) Industrial Ministries. Before 1979, the industrial ministries intervened generally only on the technical side of negotiations between foreign enterprises and the national foreign trade corporations. Now they are allowed to establish their own foreign trade corporations. They can establish contracts with foreign firms and negotiate imports and exports. They also have the power to sign contracts, provided they remain within the import and export quotas laid in the plan. They can enter into commission processing agreements, engage in compensatory trade and become partners of foreign firms in joint venture.

3) State Foreign Trade Corporations (SFTC). After 1984, the SFTC's have become gradually independent from the MOFERT and begun to operate as independent accounting units. They now share their trading activities with the foreign trade corporations of the industrial ministries, the regional foreign trade bodies and even producers. Yet, the import of important, bulky, and relatively standardized commodities like grain, coal, crude oil, finished steel and large complete plant is still their responsibilities. However, many of these corporations are only functioning as general import-export agencies⁴³⁴ for producing enterprises or regional corporations unfamiliar with foreign

trade, for their direct export functions have been either reduced or even terminated.

4) Enterprises. Urban reform started from increasing the autonomy of the enterprises. Governments at all levels have had their functions separated from those of the enterprises, streamlined their administration work and delegated more power to lower levels. Government responsibility has shifted from direct control of production, supply and marketing to mainly planning, coordination, providing services and supervision. Production enterprises are practicing a system under which the director or manager exercises full managerial responsibility or other systems of responsibility. In contrast to the past, the state enterprises now have independent powers in: management and planning; buying and selling products; product pricing; use of financial resources; wages and bonuses; establishment of economic ties across sectors, regions and ownerships; formulation of their own criteria on open recruitment of workers from the society. The excessive and rigid control of enterprises by the State has been greatly changed. The enterprises are moving towards the direction of full authority for their own management and full responsibility for their own profits and losses.

In China there are over 1200 enterprises, engaging in foreign trade transactions, including trade related consultancies, storehouses and transportation enterprises.⁴³⁵ Among these foreign trade enterprises, some are specialized foreign trade corporations, others are amalgamated corporations formed by industrial and trading enterprises. In addition, some large and medium-sized enterprises or syndicates are approved to engage in exporting their own products and importing raw material for their own use. Joint ventures, cooperative schemes and

enterprises with sole foreign investment are entitled to export their products and import capital goods.

5) Regional Foreign Trade Bodies. Another example of decentralization is that the provinces, three municipalities and some districts and cities have been granted wider powers concerning import of goods, services and capital. They have their own foreign trade bodies generally named Import-Export Commissions. Greater power has been granted to the coastal regions. They are also empowered to set up their own foreign trade bodies with structure fixed by themselves.

The regional bodies possess considerable powers over the decision on their foreign trade activities. They can, to a great extent, decide the quantities of goods they export and freely use their own foreign exchanges. The regional investment corporations are entitled to raise foreign loans and risk capital for joint ventures or to set up compensatory trade and commission processing deals. They have the power to approve the contracts up to a certain amount. However, only central authorities can approve the equity joint ventures, no matter what the amounts.

6) Central Financial Institutions. The central financial institutions have also undergone changes so as to cope with the additional financial tasks. The following are some principal institutions.⁴³⁶

The State General Administration of Exchange Control (SGAEC). As an organization directly under the State Council, it exercises an administrative part of foreign exchange control by setting exchange rates, drafting exchange control regulations and taking other foreign exchange measures.

The Bank of China. Due to decentralization of the foreign trade apparatus, the Bank of China is playing an increasing important role in foreign currency transactions.⁴³⁷ It now also has some functions of a commercial bank. It engages in foreign currency and RMB loans, organization of or participation in international syndicated loans, trust and consultancy services, trust investment and leasing.

The China International Trust and Investment Corporation (CITIC). It was founded in 1979 to promote foreign investment and introduce advanced technology for China's modernization. The CITIC establishes joint ventures by assisting Chinese and foreign enterprises to find appropriate business partners; takes an equity holding as necessary; negotiates wholly foreign owned enterprises, helps Chinese and foreign enterprises to negotiate compensation trade agreements and serves as China's principal channel for investment funds from overseas Chinese and foreigners.

7) Brief Comments. In short, the foreign trade system in China is starting to involve a wider participation of enterprises in foreign trade activities. One of the major characteristics of this decentralization of the foreign trade system is that the MFERT does not have exclusive right of conducting foreign trade. The industrial ministries share some of its responsibilities and conduct broader range of foreign trade activities. They can even set up their own foreign trade corporations. Even regional foreign trade bodies are emerging in foreign trade activities. Another characteristic is that foreign trade is no longer carried out exclusively by the few State owned foreign trade corporations established for the sole purpose of conducting export and import transactions for a defined range of products.

More foreign trade enterprises are empowered to conduct trade deals with foreign traders in a broader range of industrial equipment, raw materials and consumer goods. More importantly, these foreign trade corporations and enterprises are independent legal persons, responsible for their own profits and costs. It is therefore less likely for the few highly centralized trade corporations to exert monopoly and monopsony power on domestic market.

4. Trade Control Measures

1) Licensing. The MOFERT readjusts the items of restricted import commodities in the light of the availability of foreign exchange and the changes of domestic production and market situation, and duly makes them public.⁴³⁸

There is no import quota system in China, the import licensing system exercises restriction on part of the imports.⁴³⁹ China applies no import quotas but import control in the import licensing system, which is in compliance with the relevant provisions of GATT.⁴⁴⁰ In June, 1987, China applied import licensing system to forty-five kinds of commodities. Their import value accounts for about thirty per cent of the total value of China's imports.⁴⁴¹ The interim regulations are unifiably implemented throughout China, without country or regional restrictions. The import licensing system is one of the import administrative measures of the State with the aim of spending the limited foreign exchange resources on those imports most necessary for the national economic development.⁴⁴²

The Chinese import licensing system is administered globally without quota. Although the import of some commodities under

mandatory planning is subject to restriction in total volume, it is not allocated among supplying countries.⁴⁴³ The list of commodities under the import licensing system can be adjusted, in the light of the need of the national economy, foreign exchange situation etc. An immense amount of imported commodities will be needed for China's modernization drive, but the resources in foreign exchange come mainly from export. The commodity coverage of import licensing is largely determined by China's export earnings.⁴⁴⁴ This reflects China's traditional policy of foreign trade: i.e., export is for import, import is for construction.

Some of the import licenses are issued to foreign trade corporations, some to end-users. The domestic and foreign investment is facilitated in obtaining the import licenses.⁴⁴⁵ In fact, they are not equally treated. Foreign enterprises enjoy priority.

The products that require import licenses are decided on the basis of supply and demand conditions, domestic production and foreign exchange earnings. Generally speaking, the import of the products which can be manufactured and supplied at home is restricted.⁴⁴⁶

Since only a licensing system that is country or commodity specific may influence the level of trade and introduce discrimination,⁴⁴⁷ China's licensing system, relying on global licences and without protective dimension of quotas, requires no special attention in GATT.

2) Tariff. The general policy of the customs tariff is to carry out the policy of opening to the outside world, to encourage the

exports, to promote the imports of necessities and to protect and improve the development of national economy.

The basic principles for establishing duty rates are as follows: (1) Duty-free or low duty rates shall be applied to those imported goods which are needed for the national economy and the people's livelihood, but cannot be produced or insufficiently supplied domestically; (2) Import duty rates on raw materials shall generally be lower than those on semi-manufactured products; (3) As for parts or components of machinery, equipment, instruments and meters, which cannot be produced domestically, or the quality of which is not up to standard, the import duty shall be levied at lower rates than those on complete products; (4) Higher duty rates shall be applied to those products which can be produced domestically or which are not essential for the national economy and the people's livelihood; (5) A still higher duty shall be applied to imported products, the equivalent of which can be produced domestically and which need protection; (6) The majority of export commodities are free of export duty. Only a few items such as raw material, material and semi-manufactured products are subject to export duties.⁴⁴⁸

The customs tariff is mainly aimed at regulating importation and exportation, while revenue is a secondary consideration. The functions of the tariff are embodied in the following aspects: lower duty rates and duty exemption are introduced in order to encourage the import of technologically advanced equipment that China needs badly and can not manufacture domestically; relatively high duty rates are applied to certain industrial and agricultural products which need to be imported, with a view to protecting the competitiveness of domestic products on the domestic market and prompting the development

of the domestic products; high duty rates are applied to non-necessities and high-grade consumer goods in order to restrict such importation.⁴⁴⁹

The Chinese customs tariff is based on the Customs Cooperation Council Nomenclature, consisting of twenty-one sections, ninety-nine chapters, 1,011 headings and 1,091 sub-heading on major or specific imported or exported merchandise. The principles of tariff classification and explanatory notes are also included. It seems difficult for China to change the current tariff system to Harmonized system in the near future.⁴⁵⁰ However, the Harmonized System is being studied.

The Chinese tariff is categorized into two columns: minimum rates and general rates. The former is for goods originating in the countries with which China has conducted trade treaties or agreements containing mfn clauses; the later for goods originating in the countries with which China has not concluded such trade treaties or agreements.⁴⁵¹

Leaving out the duty-free merchandise, the minimum import tariff ranges from three per cent to 150 per cent, divided into seventeen grades whereas the general import tariff from eight per cent to 180 per cent, also in 17 grades. Normally, the minimum duty rate is one grade lower than the general duty rates.⁴⁵² The weighted average tariff rates (minimum rate) for the principal import product categories in China's foreign trade is: 11.3 per cent for raw materials, agricultural raw materials, chemical raw materials, metals and steel; 19.29 percent for capital goods such as machinery; 19.44 per cent for consumer goods such as food-stuff, etc.

As in other economies, the tariff rate is thus lower on raw materials and higher on finished goods, which means that the effective rate on the production process exceeds the nominal rate. Moreover, the preferential tariff treatment is granted to the machinery, equipment and materials for their reinforcement and installation imported as foreign investment.⁴⁵³ Duty reduction or exemption is granted to imports and exports of Special Economic Zones (SEZs). and other specially destined areas; to imports and exports for specific purposes and to materials donated for public welfare undertakings. These provisions have been formulated by making reference to international practices and for the purpose of implementing the general policy of opening to the outside world and invigorating the national economy.

In accordance with the "Regulations on Import and Export Duties", both import and export are ad valorem duties. This customs valuation system of China is more or less in accordance with the regulations of the GATT Customs Valuation Code. The duty paying value of imported merchandise is the c.i.f. value of the goods, i.e., the normal wholesale price at the place of purchase plus all charges such as packing charges, freight, insurance premiums, commissions etc., before discharge at the place of importation in China. It shall be scrutinized and determined by the customs.⁴⁵⁴ The duty-paying value for exports is the f.o.b. value of the goods sold abroad less export duty, which shall also be scrutinized and determined by the customs. These customs valuation methods are in line with the GATT Code.⁴⁵⁵ China is studying the valuation code of the Tokyo Round.⁴⁵⁶

It is provided in the Regulations that the rules of origin are adopted in the application of duty rates, i.e., the origin of

any imported merchandise which is processed or assembled by two or more countries should be the country in which the final processing or assembling takes place. But the country in which only minor operations such as packing, selecting, marking or labelling are made, shall not be considered as the country of origin of that product.

In addition to customs tariff, China maintains a system of the Consolidated Industrial and Commercial Tax (CICT) on imported goods. It is collected by the Customs for the Ministry of Finance.⁴⁵⁷ According to the provisions of the Regulations of the CITC⁴⁵⁸ all enterprises and individuals engaged in the production of industrial products, purchase of agricultural products, importation of foreign goods, commercial retailing, communications and transportation, and all other service trades are taxpayers of the CICT. The CICT is levied on domestically produced goods (now termed as product tax and value-added tax) and imported goods in balance. This is consistent with the provision of Article III of GATT.

The CICT, used to be levied on domestic products, is now replaced by Product Tax and Value Added Tax. The Regulations for the two taxes are promulgated by the State Council for implementation. For legislative procedural reasons, the Product Tax and the Value Added Tax are applied only to domestic products. Products of foreign enterprises, Chinese-foreign joint ventures and Chinese-foreign cooperative ventures are still taxed in accordance with relevant provisions of the CICT. The product coverage of the Product Tax and the Value Added Tax is almost the same as that of the CICT. So is the level of a very small number of products area slightly higher than that of the CICT. Where the CICT rates are higher than the corresponding rates of the

Product Tax and Value Added Tax, they will be reduced to the same level of the Product Tax and Value Added Tax.⁴⁵⁹

Furthermore, from June 16, 1985 onwards, it was decided to start levying an import regulatory tax, a surtax in addition to import tariff, on certain goods.⁴⁶⁰ At present, fourteen commodities are subject to the import regulatory tax, including passenger vehicles, motor-cycle, colour projection television sets, mini electronic computers, electronic calculators, woven fabrics of chemical fibres etc.⁴⁶¹

The reasons for levying the import regulatory tax are that the domestic production of a number of commodities lays too far behind that of developed countries and that import duties imposed in accordance with the provisions of the tariff regulations are unable to provide sufficient protection for the development of domestic industries.⁴⁶² It is applied to products from countries all over the world. Dutiable products imported into special economic zones are subject to import regulatory tax as required. The import regulatory tax rates are decided according to the domestic industries. It is a temporary measure to levy the import regulatory tax, and it is not intended to be incorporated into the tariff. The product coverage, tax rates and duration of their implementation are decided by the tariff commission under the State Council.⁴⁶³

In conclusion, the policy of tariff aims at protecting domestic production. The role of Chinese tariff in regulating trade is limited to a certain degree at present. However, with the intensification of the reform of economic system including the foreign trade system, the scope of the State mandatory planning may be gradually reduced, whereas that of the

guidance planning and market regulation may be greatly increased. Meanwhile, with regard to the reform of price administration, a system may be established in which the prices of a very limited number of import commodities are set by the State, while for the majority of commodities, State guidance prices or market regulated prices are applied.

The role of China's Customs tariff is growing, although it is not as important as in the market economies. Furthermore, China's participation in the Customs Cooperation Council on July 18, 1983⁴⁶⁴ and progressive adoption of the Brussels Tariff Nomenclature (BTN) reflect the important role of customs tariffs in China's foreign trade. As an important price component of the imports, China's tariff will certainly play a genuine role in promoting and protecting domestic production with progress of reforms.

3) Exchange Control. Since 1979, China has gradually carried out reforms of its foreign exchange system. It has replaced the previous system of State allotment of foreign exchange by the retention system. Under this system, the State grants foreign exchange quotas, within which foreign exchange can be purchased, by those local authorities, departments and enterprises that have earned and sold their foreign exchange to the State banks in proportion to the amount of their sales according to the State regulations. They keep foreign exchange quota accounts respectively with the SAE⁷ of its branch offices and purchase foreign exchange from a State bank to meet their needs within the specified scope of usage.⁴⁶⁵ This measure aims at helping strengthening the vitality of enterprises, enlarging their decision-making power regarding importing from abroad and bringing their initiative into full play. This policy may have a favourable

effect on the expansion of the western exports into China. The system of foreign exchange retention has the following characteristics:⁴⁶⁶

- a) It is applicable universally. Yet the units attached hereto and the percentages of foreign exchange retention are subject to the approval of the State Council or the foreign exchange authorities;
- b) The percentages of the retention are fixed within a certain period of time. At the present stage, for the export of ordinary products, the percentage is 25 per cent; ordinary non-trade receipts, 30-40 per cent. In Special Economic Zones (SEZs) and the minority nationality areas, the percentages are higher, some of which are 100 percent;
- c) The retention of foreign exchange is allocated evenly between the local authorities and the enterprises.
- d) The retention of foreign exchange retained can be used autonomously to import necessary technology, equipment, raw and processed materials and spare parts, purchase apparatus for scientific, medical and educational purposes;
- e) The units to use the retention of foreign exchange must submit a written application indication of currency, the amount and usage, together with the document of justification of competent departments to the SAEC or its branch offices for examination. Only upon approval can they use the foreign exchange;

f) No limit is imposed on the amount of retention transacted. The SAEC or its branch offices adjust foreign exchange according to supply and demand, and usually do not intervene. The adjusted portion in recent years is not substantial, usually not more than five per cent of the foreign exchange earnings of the year.

China controls the foreign exchange distribution by way of a quota system. The foreign exchange quota is the amount of foreign exchange that can be used. The Ministry of Finance, the MOFERT and the SAEC approve the utilization of foreign exchange respectively within their scope of responsibility. the SAEC does not withhold foreign exchange allocations for the import within the plan or for the import using foreign exchange retention as approved by the competent departments.⁴⁶⁷

Due to the adoption of the foreign exchange retention system, business dealings of foreign exchange between enterprises have become possible. Enterprises with surplus quotas are allowed to sell, through the foreign exchange control authority or the Bank of China, the surplus to those enterprises that need foreign exchange.⁴⁶⁸

In the foreign exchange allocation plan, only the foreign exchange quota is fixed. To the import commodities under mandatory plan, only the quantity is fixed without indicating the brand and the ceiling or floor price. The allocation is valid for one year.⁴⁶⁹ Guidance planning in the context of the foreign exchange system mainly includes utilization of retained foreign exchange and adjustment of foreign exchange. The system of foreign exchange control is sufficiently transparent and nondiscriminatory to conform to GATT rules.

The import licensing system is consistent with the foreign exchange distribution system. For the import of the designated commodities with specified volume and import restricted commodities for certain importing departments listed in the State plan, the importing units may apply for import license against their certification of approved import plan. The foreign exchange control authority shall guarantee the payment of foreign exchange.⁴⁷⁰

China's foreign exchange allocation system is still under reform. The goal of the reform is to replace mandatory planning by guidance planning so as to establish a regulatory system with economic means as the main levers. As the central bank, the People's Bank of China regulates the direction and the rate of flows of foreign exchange by such means as credit, interest rate and exchange rate so as to keep an overall balance of international payments as set by the State plan.⁴⁷¹

It should be pointed out that China is a developing country, and has problems with its balance of payments. It is necessary for China to increase exports and restrict imports in order to obtain the foreign exchange needed for development. China is not a member of the IMF subject to the IMF's Article VIII, but a member subject to Section 2 of Article XIV. In other words, China's centralized control over its foreign exchange, is in line with the provisions of GATT.⁴⁷² Even though, however, China promised that after resumption of its status as a contracting party to GATT, it will administer its foreign exchange control system in conformity with the practice of the cps.

4) Pricing of Imports and Exports. At present there are mainly three forms of price administration in China:

1) State prices, which are applied to a very limited number of important industrial and agricultural products, communications, transportation and other livelihood;

(2) State guidance prices, which are applied by enterprises to specific categories of commodities within specific price margins set by the State or by competent authorities;

(3) Market regulated prices, which are applied by enterprises in accordance with market supply and demand to the extent permitted by State laws and regulations.

The current reform of China's pricing system aims at making the price of the commodities no matter whether they are imported or domestically produced, reflect their real value and supply and demand of the market. The import and export handled by foreign trade enterprises on commission basis have been expanding continuously. As a result, the previous method of import and export pricing exclusively set by the State has been replaced by manifold methods.

China is now exercising the system of agency pricing. The agency pricing system is extensively applied in the import business of foreign trade enterprises. Under this system, the domestic price of an import commodity is composed of the c.i.f. value, import duty, internal taxes (i.e. consolidated industrial and commercial taxes), banking charges, commissions, and the reasonable profits of both wholesale and retail, and necessary management cost. The profits and losses resulting from the sales of imported commodities on the domestic market are borne

by the importing units. The total value of the imports handled under the agency pricing system by foreign trade enterprises takes up 70 percent of the total import volume.⁴⁷³

Like domestically produced products, there exists three categories of pricing for import products sold domestically, namely, State price, State guidance price and market price.⁴⁷⁴ Import costs and supply and demand relationship are required to take into account no matter which form is chosen. The same pricing is applied to foreign and domestic clients without any discrimination.⁴⁷⁵ Import duties and internal taxes are levied on the basis of CIF price of the import products. Prices of import commodities for domestic sale are determined independently by the principal to the extent permitted by the State laws and policies concerning price administration. However, it is not necessary for the principals to consult with the domestic manufacturers of the competing products. As agents the foreign trade corporations don't participate in the price determination of the imports which are sold domestically.

There are presently altogether twenty-eight import commodities subject to State pricing, mainly steel products, fertilizers and grains which are considered having an important bearing on the national economy. Categories of the commodities vary according to circumstances. The prices of imported products are set with reference to the prices of similar domestic products. The above-noted twenty-eight import commodities under State pricing are subsidized by the State. The issue is expected to be resolved gradually in the course of price reform.⁴⁷⁶ However, there is no exact timetable for the number of State priced commodities to be reduced.⁴⁷⁷

The product coverage of State price is being reduced while that of market price enlarged. Of the total value of agricultural products sold by the peasants, the proportion under State price dropped from 92.6 per cent in 1978 to 35 per cent in 1987; the proportion under State guidance price and market price rose from 7.4 per cent to 65 per cent in the corresponding period. In the total value of retailed consumer goods, the proportion under State price decreased from 97 percent in 1978 to 47 per cent in 1987 of which the proportion of light industrial products reduced from 95 per cent to 45 per cent while that of heavy industrial products from 100 per cent to 60 per cent.

As for domestic prices of agricultural commodities, other than those State priced, they are basically determined in the light of supply and demand of the market, by the enterprises which order the imports to the extent permitted by the State laws and regulations concerning price administration. The State provides guidance to the enterprises in terms of pricing policies. It is the market force that plays the decisive role in determining the prices of these agricultural products.

There are two situations for the determination of export prices. When export business is entrusted to foreign trade corporations on a commission basis, prices are determined on the basis of domestic costs and international market conditions. The foreign trade corporations charge a commission. When export business is carried out by foreign trade corporations on their own or jointly with productive enterprises, price components include purchased value or production costs, transportation expenses, storage expenses, banking charges, export duty (when levied), reasonable profit margin etc. Supply and demand conditions on

international markets are also taken into account in determining export prices.⁴⁷⁸

It is problematic in that how can China determine the amount of real cost and any subsidies in those prices. Although export tax reimbursement is practiced in China, there is still part of the product tax and value-added tax not completely reimbursed for the export commodities. Efforts are being made to correct the irrational price system of a historical nature, particularly the relatively higher pricing of manufactured goods. However, the aim of price rationalization is yet to be achieved. Before the tax reimbursement system and price system are perfected, China provides "temporary economic assistance" as a supplement of the incomplete export tax reimbursement and an adjustment of the irrational price system when linked to the international market. The purpose of the assistance is to enable Chinese products to compete with foreign products under same conditions. China has promised to gradually reduce and eventually eliminate the State assistance in process of the economic reform.⁴⁷⁹

What the cps concern about is export price determination. How is the relationship established between the domestic costs which incurred in non-convertible RMB and the international market prices which are usually a convertible currency rendered more valuable to the Chinese recipient than the official exchange trade would indicate because of the current foreign exchange retention system?⁴⁸⁰ They also doubt about whether export prices can be determined on the basis of domestic costs so as not to conflict with the provisions of Article XVI of GATT and how supply and demand conditions on international markets "take into account in determining export prices, considering that China is only beginning its process of economic reform."⁴⁸¹

In the viewpoint of Chinese authorities, however, their domestic prices and international market prices are getting closer as the price reform proceeds. Exporters have greatly benefited from devaluation of the RMB. According to them, it is not too difficult to link the domestic costs to international market prices after export tax reimbursement is implemented and State economic assistance is provided.

In China, the foreign trade corporations give priority to domestic costs rather than international market conditions in determining an export price. The administrative organs of the government do not interfere with the setting of the export prices by the corporations. The rate of commission is decided by the principal and the agent. As for the prices of joint-venture products intended respectively for the domestic market and for export they are decided by the enterprises themselves in a manner not inconsistent with the State laws and regulations concerning price administration.⁴⁸²

5. System Of Special Economic Zones And Open Coastal Cities.

Parallel to the reform, China has established five Special Economic Zones⁴⁸³ and opened thirteen coastal cities⁴⁸⁴ as a vast experiment in the development of a market economy within a planned economic system. The existence of these market oriented areas will certainly make China's trade system more acceptable to GATT cps.

The purposes for establishing SEZs and opening coastal cities are to expand foreign economic cooperation and technical exchanges, to develop foreign trade, to absorb foreign investment, to introduce advanced technology, to train professional

management personnel and to accelerate China's economic construction.⁴⁸⁵

Opening to the outside world is one of China's basic national policies applied nation-wide, not essentially limited to a coastal region. However, these areas are open to the outside world on a larger scale with better environment than the rest of the country. This is reflected in the more favourable treatment granted to the investment in those areas.⁴⁸⁶

The special policy applied to the special areas is, on the one hand, to grant local governments more autonomy in their foreign economic activities, and to accord both the foreign and the Chinese investments with the preferential tax treatment, on the other.⁴⁸⁷ Even Banks with sole foreign capitals and banks with Chinese and foreign capitals are also allowed to be established in the areas.⁴⁸⁸ Greater efforts have been made by the Chinese to create a more favourable environment with a view to attracting more foreign investment and much has been achieved.⁴⁸⁹ This policy indicates that China hopes to expand foreign markets for its exports and at the same time, to expand its domestic market for imports.⁴⁹⁰ By doing so, China will make itself closely linked with world market, therefore to promote the growth of a free market system through capital infusion. As Pattison indicated, those special areas operate on a market-oriented system of capital development and investment, and profit motivated production and labor schedules.⁴⁹¹

Therefore, products exported from the market oriented SEZs should be regarded as products exported from a market economy rather than from a centrally planned economy. Actually, some cps have treated products from SEZs as they would those from a market economy by providing the MFN treatment.⁴⁹² The U.S.

has treated at least one instance, a product exported from a SEZ at a tariff level less than that for similar goods exported from other parts of China.

A certification of the SEZ origin of goods by China⁴⁹³ will make it possible for the importing countries to administer the application of different tariffs for products from the same country. China would not refuse to do so since its goods would be levied lower tariffs upon entry into the importing countries, making the goods less expensive and therefore more marketable. An increased market for products would provide greater foreign exchange for China.⁴⁹⁴

On the other hand, this approach is also in the interest of the cps. Recognizing exports from those areas as products from a market economy would facilitate the fulfillment of aims of freer trade and gradually transforming centrally planned economy into a market oriented one.⁴⁹⁵ This approach would allow China to grow into a world class trading market, thereby benefiting the international trade community organized under GATT by providing the cps a greater opportunity to gain expanded access to the markets of China.

6. Summary And Conclusions

Under the traditional China's trade system, China was a strict State trading economy. Foreign trade was conducted exclusively by the few State-owned corporations through which, government monopolized foreign trade. This system was apparently inconsistent with that of GATT. However, important changes have taken place in China's economic system as a result of the reform in the past few years. The objective of the reform is

to establish a new system of planned commodity economy, i.e. market oriented economy.

China is now in transition from a centrally planned economy to a mixed, or more market oriented economy. As reform proceeds, the scope of mandatory planning will be reduced step by step and the scope of guidance planning and market regulation be expanded. These reforms are granting the trading system greater flexibility, giving enterprises greater responsibility for operational policy and management, and improving the effectiveness of the use of market forces.

The foregoing discussion on the reform of foreign trade control measures indicates that the country has promoted a mixed trade system in three ways: (1) output targets are set by the plan only for some essential or important products; (2) guidelines are established by the plan for many industrial products and consumer goods, which remain controlled but are allowed to fluctuate in response to market demand, and (3) there is a free market for some goods and small producers.

Major efforts have been devoted to developing commodity production and to expanding and improving the commodity market. The number of products under State guidance planning and market regulation has increased in recent years. Price control has been relaxed. Market force is playing an increasingly important role in China's economy. Taxation system has also been established in China's economic system. The role of State plan in foreign trade is considerably diminished. The enterprises now have considerable decision-making power in matters such as planning, purchasing and marketing, pricing, etc. The excessive and rigid control of enterprises are moving towards the

direction of full authority for their own management and full responsibility for their own profits and losses.

Foreign trade is subject to global licence. China's licensing system is neither country nor commodity specific, although the import of some commodities under mandating plan is subject to restriction in total value. Therefore it is generally consistent with GATT provisions. Tariffs are not yet effective instruments of trade control in the sense of GATT. But they are playing an important role in China's trade control. At least they are not used as instruments of discrimination. With the progress of reform China's tariff will play a genuine role in foreign trade. China has implemented the system of centralized control over its foreign exchange receipts and payments. The RMB is non-convertible and its exchange rate is fixed. However, the system of foreign exchange control is transparent and non-discriminatory and therefore consistent with GATT rules. As a developing country, China's control over its foreign exchange is also in line with the provisions of GATT. It is true that State prices do not reflect market situation. Nevertheless, there are only 28 commodities subject to State pricing. For a great number of other products, prices are set by enterprises or relevant agencies in the light of market situations. Therefore, China's foreign trade system could be considered to a great degree based on free price formation and the existence of a direct link between domestic and foreign prices. Subsidies are used in China's foreign trade. However, application of the subsidies conform for the most part with the provisions of GATT. The Chinese have also promised to further rationalize their pricing system as the reform deepens.

Moreover, due to the reform in ownership, there are various forms of enterprises such as individual enterprises,

collective enterprises, wholly foreign owned enterprises, joint ventures using Chinese and foreign capitals. A coastal region open to the outside world has begun to emerge. With a population of 130 million turning out one-third of the national industrial output, those coastal regions have more autonomous power and enjoy greater flexibility. Market oriented system is being operated in these regions. This factor of China's economy should really not be neglected when the cps consider China's membership.

In sum, due to the policy of enterprises autonomy and the diversity of economic activities, the role of State institutions has been greatly reduced. When importing foreign goods, enterprises have to consider the quality and the conditions and terms of the transaction. Therefore political and non-commercial factors play little role in import and export activities. This trade practice has always been favored by GATT. The reform has made and will certainly make its tariff, pricing, and exchange rate systems increasingly closer to those of the most cps, and make China more acceptable to GATT. Further reform will certainly enhance China's ability to fulfil its GATT obligations.

D. China's Membership Of GATT

1. China's Attitude Towards GATT

a. China's Motivation

During the past ten years, China has followed an open to the outside world policy with the purpose of achieving a greater degree of integration with the world economy.⁴⁹⁶ China's application for GATT membership is the reflection of this strategy.⁴⁹⁷ The open policy signifies that China's

traditional model of centrally planned economy has been cast out and that the country is advancing towards a "planned commodity economy", namely, socialist market economy.⁴⁹⁸ The new policy also indicates a fundamental change of economic ideology: a shift from emphasis on self-sufficient internal growth⁴⁹⁹ towards an attitude that greater integration with the world economy would accelerate domestic economic growth by allowing China to build upon its comparative advantage in international trade.⁵⁰⁰ The international division of labour is also accepted in China under the new policy.⁵⁰¹

The change of theory has brought about the change of China's attitude towards multilateral trade and its previously unfavourable attitude towards GATT.⁵⁰² By obtaining GATT membership, China clearly keeps the following objectives in its mind. Bilateral trade approach was considered necessary when China was shut out of the major world markets.⁵⁰³ While this approach may be justified by the history,⁵⁰⁴ it apparently no longer meets the changing circumstances and China's current policy of opening to the outside world.⁵⁰⁵ In those bilateral agreements signed with major world trade countries, China, like those East European countries, is subject to various kinds of discriminatory quantitative restrictions, selective safeguard measures, and antidumping and countervailing measures applied on discriminatory criteria.⁵⁰⁶ Therefore, China has not been benefited from those bilateral trade agreements because they were not signed in the true sense of the MFN treatment.⁵⁰⁷ Although it has high import prosperity, China's foreign trade, to a great extent, depends on the commensurate export.⁵⁰⁸ However, under these agreements, China's export to the industrialized countries has been greatly restrained. The discriminatory practices of western countries, was criticized as a major obstacle to the optimal utilization of China's resources and the maximization of its comparative advantage in international trade.⁵⁰⁹

GATT membership based on the principle of unconditional MFN treatment would allow China to participate more fully in the world trading system. GATT assures that the MFN treatment would probably facilitate China to maximize its comparative advantage in world trade, and to allocate its resources in an optimal manner, since it may avoid the shortcomings inherited in that of the bilateral agreements.⁵¹⁰ This is just what China seeks to obtain in request for GATT membership.⁵¹¹ China expects not only unconditional MFN treatment equivalent to that accorded to all other cps with market economies but also the same differential and more favorable treatment accorded to developing countries at similar stages of economic development.⁵¹²

By seeking GATT membership, China obviously hopes to demonstrate to the outside world its determination and ability to reform its highly centrally planned economy to a "planned commodity economy". China is now moving toward establishing a market oriented domestic economy and making efforts to attract foreign investment and high technology.⁵¹³ As Mr. Herzstein pointed out "(i)f GATT membership is established in a way that represents a serious commitment by China to market principles in its external economic relations, this fact would underscore the seriousness of its commitment to a domestic market system. This reassurance to the international business community would probably enhance China's ability to attract foreign investment and build enduring trading relationships with western companies!⁵¹⁴

By requesting for the GATT membership, China expects to play a major role in world trade by participating in the future rule-forming process. It is not satisfied only with the status of passive trading partner.⁵¹⁵ Due to the rapid development of new technologies and communications, the conditions of

international trade are changing.⁵¹⁶ Therefore, the rules formed primitively are doomed to change. China is surely interested in participating in various activities of GATT, such as in the work of GATT Committees; Working Parties and GATT Subbodies to plan new projects to explore problems and in negotiations to formulate new rules.⁵¹⁷ In fact, China's membership in the MFA has given it more influence in textile negotiations and allowed China to play a role in renegotiation of the MFA.⁵¹⁸

As a new participant of international trade, China needs to know information on the policies and practices of the cps through participation in GATT. By doing so, China could learn from other cps a great deal of valuable information on how they are dealing with trade relations in GATT.⁵¹⁹ As China's export increases and creates protectionist pressures overseas, China may hope, through participation in GATT, to take advantage of GATT protection mechanism by putting its trade under a set of multilateral rules to which its major trade partners are committed. As mentioned before, much of China's trade is carried out pursuant to bilateral trade agreements subject to revocation by either side.⁵²⁰ A violation of a bilateral agreement would be a matter only between the country involved and China. While a violation of the GATT rules could create an adverse precedent which could be used against the violating party by other GATT member nations. The cps would be less likely to violate China's trade rights under the multilateral GATT rules than they would under bilateral commitments.⁵²¹

By becoming a cp to GATT, China may also want to make use of GATT forum for consultation and the resolution of disputes with its trading partners on a wide variety of trade issues. China

has benefited from the GATT sponsored Textile Committee for resolving a dispute between China and the U.S. over the new "Country of Origin rules imposed by the U.S. on textile imports.⁵²²

In short, the main purpose of China's request for GATT membership is to eliminate discriminatory treatment maintained by its trading partners.⁵²³ For achieving this objective, China has made great efforts to make its trading system consistent with the rules of GATT and stated and showed repeatedly its willingness and ability to fulfil GATT obligations.⁵²⁴ Even though it is very likely that the cps may require China to make further concessions, such as market accession question, special safeguard procedures, transparency question as well as consultations on⁵²⁵ China's reforms. However, any additional obligations may render China to reconsider its position towards GATT⁵²⁶ since they will simply repeat the bilateral trade practices of China. As a Chinese commentator stated that:

From a Chinese point of view, resumption of its status as a GATT CP would make no sense, if it involves acceptance of a legal instrument which only serves to codify discriminatory clauses or special safeguards contained in the bilateral agreements. The bilateral trade balance approach will give China wider scope to manoeuvre with its purchasing power than GATT membership with more obligations and less rights. The real interests of the CPs lie in ensuring China's undertaking of GATT obligations in exchange for its full GATT rights under relevant provisions.⁵²⁷

There will unavoidably be a tough bargain over the terms of China's GATT membership between China and the cps during the negotiation. It is clear that both parties will have to make concessions in order to make the deal.

b. China's Position

From the above-made analysis of China's relationship with GATT, its trade regime and its economic status, it is apparent that China's case is unique. This uniqueness is reflected in China's attitude on its membership.

First, China has requested an original status, rather than accession, in its application for GATT membership.⁵²⁸ The Chinese consider the withdrawal by the Taiwan authority is invalid and only unique circumstances of a political nature preventing China from functioning as a full cp.⁵²⁹ Second, the Chinese government has expressed its position on GATT membership in a statement that China wants to enter into substantive negotiations on the basis of tariff concessions.⁵³⁰ As one Chinese writer points out that "(t)he participation in multilateral trading system based on the principle of unconditional MFN treatment could provide China with an opportunity to allocate its resources in an optimal manner. This is the point of departure from which China seeks resumption of its GATT membership".⁵³¹ Third, China has emphasized the fact that it is a low-income developing country and thus wanted to enjoy the GSP treatment accorded to other developing nations in GATT.⁵³² China's per capita national income in 1985 was about U.S. \$ 223. It is only marginally above that of the least developed countries, as established by criteria set forth by the U.N., and many times lower than that of the more advanced developing countries. In a communication submitted to the Director General of GATT, the Chinese government stated that ongoing process of economic reform in China would contribute to the expansion of economic and trade relations with the cps, and

the participation of China as a cp in the work of GATT would further the objectives of GATT. It therefore expected to receive the treatment equivalent to that accorded to other developing cps at similar stages of their economic development.⁵³³

c. Problems Raised

The first request for GATT membership raises a legal issue.⁵³⁴ Although Chinese insists that China resume its membership rather than accede to GATT, this position has not been accepted by all GATT cps.⁵³⁵ It is said that the cps do so to strengthen their bargaining position because they will be able to negotiate the terms of China's membership by taking advantage of Article XXXIII or to invoke an exception to Article XXXV concerning the MFN treatment for China if they are dissatisfied with the results of the negotiations.⁵³⁶ It seems that China will insist on its position since it relates to the legality of the Taiwan authorities' withdrawal. This is an issue concerning the Chinese government's one-China policy,⁵³⁷ a sensitive question to the Chinese government.

The second request concerns the issue of admission ticket. As a large country with a planned commodity economy, China has its own reasons to prefer to make tariff concessions. But some GATT cps may insist on additional obligations by China because they do not believe that tariff plays a significant role in China's economy and that reduction in tariffs will secure increased market access.⁵³⁸ Therefore, there will be a bitter argument about what kind of concessions China will make in exchange for the benefits of GATT membership.

The final issue raised by China's application for GATT is that the U.S. may refuse to grant the GSP treatment to China. Although the U.S. recognizes China as a developing country in its bilateral trade agreement,⁵³⁹ it does not currently extend the GSP treatment to China.⁵⁴⁰ The decision to give the GSP benefit to another nation is within the discretion of the President of the U.S.⁵⁴¹ China's GATT membership would make China eligible to receive the GSP treatment from the U.S.⁵⁴² China is already a member of the IMF and is receiving MFN treatment. But there is no guarantee that the President of the U.S. would in fact do so.⁵⁴³

2. China's Admission Ticket

a. Entrance Fee Problems

Although China itself prefers to enter into substantive negotiations on the basis of tariff concessions,⁵⁴⁴ an import commitment may be suggested as an alternative for China's membership.⁵⁴⁵

Obviously, China will never accept this approach. As a Chinese writer puts it, China is different from the East European countries. China is a founder member of GATT. The Chinese government's attitude toward its GATT membership is that it is a resumption. By acceding to GATT under the import commitment, China would implicitly indicate that it accepts the withdrawal from GATT by the Taiwan authorities. It would be difficult for China to accept this.⁵⁴⁶

In addition, China, as noted above, is now undergoing a drastic economic reform under the present decentralized trade system, it is practically very difficult, if not impossible, for the Chinese government to implement an import commitment.⁵⁴⁷ Since there are more than one thousand corporations engaged in import and export transactions in China.⁵⁴⁸ The central government of China simply could not control the total import volume by obliging them to import from particular sources, disregarding prices, and quality considerations. The recent high inflation occurred in China may serve as a good example to testify the lack of control in China's economy.⁵⁴⁹ Politically speaking, it is necessary for China to go back to the centrally planned economic system in order to implement the import commitment. Economically, China's reform to a great extent depends on a better international trading environment. The acceptance of an import commitment will increase its financial burden.⁵⁵⁰ It is obvious that the approach of the entrance fee may prevent China from obtaining a trade surplus, as export trade revenues are absorbed by ever increasing annual import requirements.

Further, an import commitment is not only inconsistent with the spirit and direction of the economic reforms in China, but also contradictory to GATT principles and rules. This commitment would make bilateral approach necessary in international trade. As quoted earlier, it does not make sense for China to ask the cps simply to approve the country specific import commitments contained in the existing bilateral agreements.⁵⁵¹

Moreover, an import commitment is based on the basis of the special circumstances of Commecon countries. It was intended to prevent export earnings from trade with the cps from being

simply used to finance imports from other Comecon countries. China, unlike Poland, Romania and Hungary, does not belong to any economic bloc and more than 85 percent of its trade is already conducted with the GATT cps.⁵⁵² Any increase in China's purchasing power will be in the interests of GATT cps. On the contrary, an annual increase in China's import commitment will be excessive and hurt China's purchasing power, by hurting the interests of the GATT cps.

Finally, China is a developing country, enjoying the preferential treatment granted by most of the cps. GATT Article XVIII recognizes that the attainment of the objective of GATT will be facilitated by the proper progressive development of the economy of those cps whose economy can support only a low standard of living and is in the early stage of development. Therefore, if preferential treatment is applied to China in the multilateral context, it will contribute to the expansion of trade with the cps. This then, hopefully, will encourage the cps to accept China's resumption on the basis of tariff concessions, without imposing discriminatory clauses such as import commitments.

Hungary had reformed its trading system by decentralization when it eventually acceded to GATT on the basis of a schedule of tariff concessions.⁵⁵³ Its Protocol of Accession contained no specific quantitative import commitment.⁵⁵⁴ However it had an identical safeguard clause, providing for reviews, and permitting GATT countries to retain discriminatory restrictions against Hungary. This was so because the Hungarian customs tariff did not apply to other socialist States, including China.⁵⁵⁵ China may follow the Hungarian model by asking for tariff concessions as the entrance fee, but it would never accept any discriminatory restrictions, as imposed on Hungary.

During its accession to GATT, Yugoslav did not suffer from any discriminatory restrictions from GATT members, so it did not care how long the process took.⁵⁵⁶ However, if the Yugoslavian model were followed and applied to China, it meant that China's membership would become a marathon. This is what China does not desire to do, because China is now suffering from discriminatory restrictions by some major GATT members (mainly conditional MFN treatment from the U.S. and discriminatory quantitative restrictions from the EEC).⁵⁵⁷ These are great obstacles to China's development of outlooking economy, considering 85 per cent of China's trade is conducted with western countries. On the other hand, as an associate member China could only enjoy limited benefits of GATT membership. It could not ask for compensation when tariff concessions were withdrawn or tariffs were increased by the cps. That is to say, China could only have passive benefits of tariff concessions, with no right to bargain on these tariffs.

Although the structure of import commitment has its strong points in several aspects as described by Mr. Herzstein⁵⁵⁸ it is not in the interests of both China and the GATT members if used in China's case. As concluded by learned Herzstein, either China or GATT would consider an import commitment as the proper basis for China's GATT membership.⁵⁵⁹

From the prospective of the GATT cps, the Chinese government is not in a position to always satisfy a specific import commitment since the central government has lost much of its power in trade control due to the economic reforms. Furthermore, as Herzstein put it, founded or not, the cps may not believe China's import commitments in light of China's frequently changing trade policies and practice in trade.⁵⁶⁰

On the other hand, if an import commitment were imposed on China, it would increase the deciding power of the central government in trade by allowing it to maintain a ceiling on total import and make decision on the categories of imports.⁵⁶¹ As a consequence, once the ceiling is reached, foreign traders could no longer enter the Chinese markets even though their supplies may prove needed inside the markets. Foreign products may be highly competitive, yet, they might be kept outside the markets, because the planners, rather than market factors, would have the final say on what products to be imported. Their decisions are usually made in consideration of protection of certain industries.

Besides, an import commitment may push China to choose bilateral approach.⁵⁶² In this case, the GATT cps would lose the benefit of having a common international trade regime with China through which their trade relations with the developing world's largest market could be further expanded.⁵⁶³ "The interests of GATT and its cps will be better served by China's adherence to the GATT principles and rules by undertaking economic reform than by insisting that China accepts special conditions and seeking to maintain existing discrimination against China.... China seems to take GATT membership as a spur to accelerate its domestic economic reform, and the outcome of the future negotiations on its membership could have important implications on the continuity of an outward looking strategy".⁵⁶⁴ Apparently, a closed China with a centrally planned economy is not in the interests of the GATT cps.

From the perspective of China, the import commitment will severely limit China's flexibility in trade. Since any country's import needs are not invariable due to the

development of its economy, it would not be adapted to such changes. The economic burden on China of an annually increased import commitment may also be beyond China's ability to bear, particularly in light of present China's economic situation.⁵⁶⁵ Under these circumstances, Mr. Sheridan believes that "for an already developed economy the expansion of multilateral trade may be sufficient to justify accession to GATT. However, an economy being guided by progressive economic planners, such as the PRC, need not be subjected to the kind of annual increase entrance fee that has been charged to other nonmarket economies in the past."⁵⁶⁶

Indeed, the main obstacle to the expansion of China's trade is the shortage of foreign exchange.⁵⁶⁷ Due to discriminatory measures against China contained in bilateral agreements, China's export efforts have already been seriously frustrated by the protectionism in major export markets.⁵⁶⁸ Therefore, if the exceptional import commitment were imposed on China, as one Chinese source predicts, "the imposition of additional obligations will push China to reassess its position towards GATT."⁵⁶⁹ In this case, the bilateral trade mechanism outside GATT might better serve China's interests than multilateralism does within GATT.

b. Specific Safeguard Clause

As previously described, the accession protocols of the three centrally planned economies all provided that selective safeguard measures be applied if no solution is reached after bilateral consultations in the case of growth of imports exceeding the adjustment capacities of the domestic producers. Some of the cps may insist on imposing a special safeguard clause

on China. They are concerned that GATT rules may not provide sufficient protection against goods exported by China.

Nevertheless, unlike the three socialist States, except Romania China is a developing country and should not be subject to a selective safeguard clause imposed by developed cps on an unequal basis. In addition, a selective clause is discriminatory and conflict with the non-discriminatory principle of GATT. Finally, China is now experiencing a transition, from a highly centralized economy to a more market-oriented economy. Although it still maintains State ownership, market forces are playing a greater role in determining pricing and production. In this circumstances, GATT provisions on regular safeguard and consultations should be adequate protection for the cps. No selective safeguards are necessary.

This does not, however, necessarily mean that China will not make any compromise. On the contrary, China might be willing to accept selective safeguards in exchange for the western elimination of discriminatory measures against Chinas trade, i.e. the conditional U.S. antidumping statutes against NMEs, as well as the EEC discriminatory quantitative restrictions.⁵⁷⁰ In any case, selective safeguard clause should be temporary and include a timetable for elimination.

3. Applicability Of Countervailing Duty Rules

Although the cps are permitted to impose antidumping and countervailing duties on goods from the planned economies, the provisions of GATT concerned with dumping could prove unworkable in the case of the planned economies. Moreover, countervailing

and antidumping duty rules are based on inaccurate methodologies for assessing the amount of the respective duties to be applied.⁵⁷¹

GATT permits the cps to invoke a countervailing duty to offset the effect of a subsidy or grant assisting competing imports.⁵⁷² Under GATT, the government of an import may establish the existence of another government's subsidy or grant, assess the injury caused by it, and impose a countervailing duty upon the goods to remedy the injury and remove any comparative advantage.⁵⁷³ It also allows the cps to impose an antidumping duty.⁵⁷⁴ It is dumping when an exporter sells goods in foreign markets at an export sales price below the home market value.⁵⁷⁵ By dumping of the unfairly-low-priced goods abroad, the exporting country may gain much needed foreign exchange in addition to other benefits. The purpose of countervailing and antidumping duties is to stop an export country from obtaining an unfair comparative advantage over an import country in the production and pricing of similar goods.⁵⁷⁶

A "Constructed Value" of the exported goods must be determined to substitute for the actual value in market economy in order to apply a countervailing duty to goods from a centrally planned economy.⁵⁷⁷ Due to the somewhat ambiguous provision of GATT,⁵⁷⁸ the cps may have wide discretion in drafting their own countervailing duty rules; therefore, several methodologies have been created for assessing the amount of the bounty or grant. Among these methodologies are two prominent surrogate approaches. One is called the surrogate producer approach. This methodology uses the price for similar goods produced in an economy determined by market forces,⁵⁷⁹ or the production price for a similar producer in a different nation.

The other is the surrogate country approach, i.e., using the price charged for the goods "in a market economy (State) which is identical to the nonmarket producer (State)...."⁵⁸⁰ When either method is applied in the context of the centrally planned economy for assessing the proper duty, errors may occur because the surrogate producer or surrogate country itself may be receiving or granting a subsidy.⁵⁸¹ It is also possible that the goods may be so unique that a surrogate producer of similar goods can not be found, as in the case of strategic metals or mineral.

However, it is controversial whether countervailing duties should be applied to goods from the centrally planned economies.⁵⁸² In the opinion of the American Federal Circuit Court of Appeal, expressed in the case of Georgetown Steel Corp. v. United States,⁵⁸³ countervailing duty may not be applied to goods from nonmarket economies,⁵⁸⁴ the centrally planned economies "were not providing the producers of the goods at issue...with the kind of 'bounty' or 'grant' for which Congress...prescribed the imposition of countervailing duties."⁵⁸⁵ The Committees on Ways and Means Report on H.R.3 explains that the Committee is "aware of, and sensitive to, the theoretical and administrative difficulties of applying the countervailing duty law, which is generally based on market oriented principles, to countries whose economies are generally not market oriented."⁵⁸⁶ The centrally planned economies, as previously described, do not operate on market principles, and the actual cost of producing their goods is generally impossible to determine; price references are not useful and the factors of production cannot be valued because currency is not convertible and resource allocation is not governed by the market forces of supply and demand. The EEC has shared the same viewpoint by

refusing to countervail the goods from the centrally planned economies.

In sum, not only are countervailing duty rules unworkable in the case of the NMEs, but more importantly, they disrupt trade with the centrally planned economies.⁵⁸⁷ China, as previously discussed, is now neither a centrally planned economy, nor a market economy. It is quite problematic to what extent countervailing duties will be applicable to China. In fact, it is very difficult to apply them to exports from China, considering the characteristics of China's economy. Even if China were taken as a NME, it might not be in the interests of the cps to take antidumping and countervailing duty measures against China on the grounds of the above analysis of the measures. As one western source pointed out that "the best policy would be to allow the PRC an opportunity to expand its foreign markets and to earn needed foreign exchange without the imposition of overly harsh tariffs. Such a policy would allow the PRC to grow into a world class trading market, thereby benefiting not only its own population, but also the international trade community organized under GATT."⁵⁸⁸

4. Resumption Versus New Accession

China has stated that it need not apply to GATT as a new member but resume its founder member status. The arguments may be summarized as follows:

1) China is one of the twenty-three original signatories to GATT in 1947.⁵⁸⁹ On October 1, 1949, the present government was established to replace the old government as the representative of China. In 1950, the Taiwain Regime withdrew China from GATT.⁵⁹⁰ However, the new government has

not recognized the validity of the withdrawal by the old government⁵⁹¹, nor have some of the cps.⁵⁹² In 1965, the Taiwain authorities' request for observers status in GATT was rejected by Czechoslovakia, Cuba, Yugoslavia, France, the United Kingdom, Sweden, the Netherlands, Denmark, Norway, the United Arab Republic (now Egypt), Poland, Indonesia and Pakistan. They all stated that they recognized the government of the PRC as the sole lawful government of China.⁵⁹³ The Chinese government notified the world community and all major international organizations generally that it was the sole lawful representative of China.⁵⁹⁴ Therefore, China considers that it has been a member of GATT all along.

2) The U.N. and its affiliated organizations and other international organizations such as the IMF and the World Bank have recognized the PRC as the proper representative of China and resumed its membership. After the Taiwain authorities withdrew from it in 1951, the Food and Agricultural Organization (FAO) allowed China to resume its original seat without applying as a new member.⁵⁹⁵ GATT has indicated its attitude to follow the U.N. decision on this question. As a Chinese writer puts it, "(t)he adoption of the U.N. General Assembly Resolution 2758 (XXVI) and the subsequent action taken by the cps in 1971 have actually settled the legal issue. Now that China has requested the resumption of its CP status, the Contracting Parties should accept the request accordingly."⁵⁹⁶ These international organizations reviewed the question of the China's seat and accepted that "representative of the Republic of China should no longer attend sessions of Contracting Parties as observers."

However, Mr. Heizstein pointed out that this request raised a practical problem, i.e. for thirty-five years, China had

failed to follow GATT obligations, participate in trade-liberalizing negotiations, or otherwise behave as a GATT member. Since then great changes have taken place in both China and GATT. Therefore, if China were allowed to have the original member status, it would enjoy immediate benefits of GATT membership. In this case, the cps might fear that their interests would be hurt.⁵⁹⁸ It is apparent that the cps wish to bargain on China's admission ticket. In other words, they might want to apply non-application clause in their relation with China, particularly the U.S.⁵⁹⁹ If China resumes its seat, Article 35 of GATT could not technically be invoked because China would not be a new member.⁶⁰⁰ This Article provides that the General Agreement shall not apply between any two contracting parties if they have not entered into tariff negotiations, or if either of the parties does not consent to such application at the time either party becomes a cp.

Nevertheless, the U.S. may also insist on China's participation under the accession procedures laid out in Article XXXIII.⁶⁰¹ Under that Article a country may accede to GATT on terms to be agreed upon between such government and the contracting parties. The reason that U.S. prefers Article 33 is that the procedure of the Article would enable it to address the special problems resulting from the nonmarket nature of China's economy. The U.S. Trade Act of 1974 (Section 406) establishes a separate safeguard procedure for communist countries. This provision permits safeguard action to be taken bilaterally against imports from an individual country on the criterion of "market disruption", rather than that of "serious injury", applied under Section 201 of the same Act, under which the U.S. implements Article XIX of GATT. Over and above, the same Act (Section 402) denies non-discriminatory treatment to non-

market economy countries which impose emigration restrictions on their citizens. The U.S., at present, accords China most-favored-nation treatment by a waiver of Section 402 to be extended annually by Congressional approval.

It is economic issues rather than legal cases that are behind the China's request for resumption. As a matter of fact, the insistence on China's original membership does not necessarily prevent recourse to the non-application clause.⁶⁰² One Chinese writer estimated "the crucial problem is the admission ticket, that is, what kind of concessions China will make in exchange for the benefits of GATT membership."⁶⁰³ Mr. Herzstein shared a similar opinion by advising the cps not to take "an overly legalistic approach to the accession problem but to pay attention to the practical problems raised by China's membership."⁶⁰⁴

E. Proposals

Mr. Herzstein put forward a six stage proposal similar to Yugoslavia's accession for solving China's membership. In his words, "China and the GATT member countries should establish a process by which China could gradually assume GATT obligations, and receive certain GATT benefits, while its economic and trade reforms go forward."⁶⁰⁵ The six stages are:

Stage one: Information gathering. While China, as an observer of GATT, further its knowledge of GATT, GATT could establish a work party to examine the reform of China's trading regime.

Stage Two: Establishing Mile stones. That is to say China and GATT Working Party should establish criteria to determine at

what stage(s) in China's reforms Chinese trading partners would be assured that there is a sufficiently large and free market in China to grant China the benefits of GATT membership.

Stage Three: Tariff Negotiations. It is suggested that tariff negotiations could be conducted right now since most GATT members are already granting tariff concessions to China in the form of MFN treatment.

Stage Four: Experimental Association. This experiment should be conducted to the extent possible in accordance with both the GATT rules and the Chinese economic system. The purpose of it is to gain experience for both parties.

Stage Five: Phasing in GATT benefits. The working party may serve as a monitor over China's progress towards the criteria agreed upon. Once they are reached, additional benefits may be granted to China.

Stage Six: Full GATT membership. Full GATT membership would be established after China has reached the criteria and both sides have agreed upon reciprocal tariff concessions.

This is a wait-and-see approach towards China's membership. This approach will not be in the interests of both China and the cps. Instead, the cps should encourage China's reform by facilitating its integration into the multilateral trade system by meeting China's reasonable demands for eliminating the discriminatory restrictions against China as soon as possible. Under the common international trade regime, China would be bound by GATT principles and obligations. Therefore, the cps would enjoy the benefits of further expansion

of their trade relations with China, the developing world's largest market.

A Chinese scholar suggested a proposal of a package of commitment, including a commitment to tariff reductions as well as to participate in some codes on non-tariff barriers concluded at the Tokyo Round.⁶⁰⁷ Insisting that China's reforms give it a sound argument to ask for GATT membership on the basis of tariff concessions, this Chinese scholar, however, admits that a simple tariff reduction might not be adequate to obtain membership benefits and to meet the legitimate concerns of GATT members, due to the incongruity between the NMEs and GATT system.⁶⁰⁸ The advantages of the package of commitment are that it will balance the benefits between China and the cps under GATT and restrict China from making use of means still available in its economic system to nullify and impair the benefits of GATT to the cps.⁶⁰⁹

Another Chinese scholar, expressed a similar opinion by stating that "by resuming its CP status, China expects unconditional most-favoured-nation treatment equivalent to that accorded to all other cps and the same differential and more favourable treatment accorded to developing countries at similar stages of economic development".⁶¹⁰ In order to achieve this objective, he suggested that China should declare, in the form of a declaration with the cps, that its on-going reforms will ensure that the conformity of its trade laws and policies with its obligations under GATT.⁶¹¹ In his opinion, China may accept MTN Codes and Arrangements and a new schedule of concessions shall be made in the negotiations of the Uruguay Round.⁶¹² In the meantime, the cps maintaining discriminatory measures inconsistent with the provisions of

GATT against China's exports should eliminate such restrictions; they should also undertake to remove all other discriminatory provisions in their domestic law and regulations.⁶¹³

In the opinion of the writer, these Chinese scholars' opinions indicate that they have taken both the cps' and China's concerns into consideration. On the one hand, they suggest that China participate in the codes and arrangements on non-tariff barriers concluded at the Tokyo Round. On the other hand, their opinions also request the cps to give unconditional MFN treatment to China and to eliminate discriminatory restrictions inconsistent with GATT provisions against China's goods. These suggestions will not only make China's commitment in line with GATT principles but also basically meet the cps' demands. They are reasonable also because they are consistent with China's characteristics, i.e. China is in a transition from planned economy to a market oriented one and a developing country. China may take the following several stages to resume its status in GATT:

First, to further its economic reforms to make its system closer to that of the cps. This is the key element for China's membership. At the same time, continue participating in the trade negotiations of the Uruguay Round;

Second, to reconfirm the obligations undertaken by the Nationalist government and study the amendments made to the GATT Agreement before the Tokyo Round;

Third, to accept the other agreements entered into in the Tokyo Round; These two obligations would serve to ensure the cps that China's reentry would not hurt their interests in GATT;

Fourth, to undertake all the obligations under the General Agreement at a proper time.

VI. CONCLUSIONS

GATT was created in accordance with the U.S. policy in the post-war period. It was expected that GATT would provide an adequate framework for implementation of the U.S. trade policy towards Eastern Europe.⁶¹⁴ In response to this policy of the U.S., the East European States refused to participate in the multilateral trade and its institutions at first with a purpose to frustrate the U.S.'s intention to dominate the world trade and to protect their industrialization.

Although the Chinese Communists had expressed their desire to develop trade relations with the West even before they took over the power, the new government from its inception had been kept away from the world trade system and suffered from the western blockade policy. This may be an important reason for the establishment of the centrally planned economy system in China.

In the mid-1950s, the East European States began to favour the principles of multilateralism and non-discrimination. By mid-1960s, they even began to accept GATT as a world trade institution. Their purpose was purely practical: to eliminate trade discrimination and to expand trade relations with the West. This change reflected the change of the world situation, a bipolar system was established.

The trade policies and the economic systems of socialist States are contradictory to the principles of GATT: one is a highly centralized system in which State plan plays an essential

role in trade, the role of tariff rates is limited. The other is based on the free market economy, in which price is a dominant element, tariff plays a significant role in world trade. In these circumstances, GATT principles, such as nondiscrimination, reciprocity, etc. can hardly regulate the trade relations between the state trading countries and the cps. However, the difference of systems did not prevent GATT from trying to make compromises between socialist states and the cps. As a set of procedures to be used in helping reaching agreements, GATT has proved itself flexible enough to be able to provide a forum for the two economies, to work out compromise. Socialist states and the cps have different opinions on the MFN treatment under GATT. These differences have caused problems not only in legal theory but also in practice. Except Yugoslavia, who completely reformed its system, GATT experience with socialist states, to a great extent, was not successful. The fundamental principle of non-discrimination was applied as an exception to the trade relations between the state trading countries and the cps. The essence of this approach of GATT is an exchange of the tariff reduction by the cps for import commitment from the state trading countries. The cps have not eliminated discriminatory qrs on exports from the East European countries. The special safeguard clauses have been proved to be groundless. Inport commitments and other special assurances have failed to provide the reciprocal trading opportunities and have caused unfairness in East-West trade.

As previously discussed, China became a member of GATT in 1948. At that time, the former Nationalist government was the lawful representative of China. This situation had been kept until 1949 when the government of the People's Republic of China replaced the former government as the lawful representative of China. Since the withdrawal by the Taiwan

authorities took place in 1950, when it had lost the status of the lawful representative of China, the withdrawal should have no validity at all in international law. In accordance with generally recognized principle of international law, the change of government should not affect the effect of the international agreement signed by relevant states. Therefore, China's membership since 1949 has only been suspended. The question is how to resume its status as a contracting party. This approach is consistent with the practice of other international organizations, such as the United Nations, the World Bank and the IMF. China has already resumed its membership in the three organizations. GATT, the World Bank and the IMF have jointly formed the structure of world economy after the World War II. They are responsible respectively for world trade, economic development and financial cooperation. It is not only important but also beneficial for a country to become a member of the three. Since the World Bank and the IMF have already resumed China as their members respectively, GATT should not delay on this matter any longer.

It is a fact that China had changed its economic system from market economy to planned economy due to the government change. However, this does not necessarily mean that China can not keep its membership of GATT. That China has not been able to participate in GATT activities only means the suspension of China's membership. If China had always participated in GATT activities, would China have lost its membership? Czechoslovakia's case is similar to China's. Czechoslovakia has not lost its membership because of the change in government and the economic system. In fact, the economic systems and activities in both China and the cps have changed greatly in the past forty years. On the one hand, it is quite common that the states with traditional market economies have

become not only the owners of energy and resources, coal and steel, and other mineral resources, highway, railway, etc., but also the important purchasers in both domestic and international markets. In fact, the western government has played, to a certain degree, a similar role to the government of the planned economies. On the other hand, China's reform during the past decades has made market factors develop rapidly in China's economic system. Therefore the differences between the two systems are reduced as a result of the change taking place in both systems. There is no reason to refuse China's application for resumption of its status as a contracting party.

As noted above, China has undergone a drastic economic reform in the past ten years. Although it is not a kind of market economy like most cps, it is no longer a centrally planned economy as it used to be. China's economy is in transition from a centrally planned economy to a more market-oriented economy. The reform under way makes it possible for China to resume its membership of GATT. Its tariff, pricing, exchange rate, licensing regimes etc. are increasingly closer to those of the market cps. There should be no reason for the cps to delay China's assumption of its status as a cp. China is able to fulfil its GATT obligations under current trade regimes.⁶¹⁵

Although China, like the three East European cps, is a socialist State, it is different from those countries in many aspects. It is impossible for China to follow the precedents of those countries. The issues raised by China's membership are a challenge to the ability of China and the cps to work out a pragmatic compromise. The International community should not passively let Chinese reform go forward. It can actively facilitate the process of China's reform by integrating China into the multilateral trading system in accordance with GATT

principles. Any import commitments or other general undertakings inconsistent with GATT principles will definitely discourage increased trade and not provide the confidence in competitive fairness needed for expanding trade.

China's trade relations have been conducted through bilateral trade agreements. Most of China's trade partners are GATT cps, whose trade with China has accounted for more than eighty-five per cent of China's trade by value. These bilateral trade agreements are inconsistent with the spirit of GATT. Nevertheless, these agreements were signed before China's participation in GATT activities and for the purpose of the MFN treatment. Once China's membership is resumed, there will be no difficulty for China to terminate these bilateral agreements.

China should continue to deepen its economic reforms by making more changes that will consolidate the market-oriented progress of its economy. Following the resumption of GATT membership, China will be obliged to increase the transparency of its trading system further and to adapt its trade policies and regimes to conform to GATT principles and practice. Moreover, China re-entering GATT will certainly promote the development of a fair trade system and expand the trade relations between China and the cps. Even those which have no diplomatic relation with China will be able to develop economic relations with China. Under the non-discriminatory principle of GATT, the cps will enjoy the MFN treatment in China and their interests shall be well protected. At the same time, China can not impose any trade restriction without the approval by the cps. In addition, China has always kept a cautious approach towards dispute settlement by a third party's court or arbitrary court. The trade dispute between the cps and China will be better

settled within GATT procedure for dispute settlement after the resumption of China's membership.

The opportunity of the cps expanding trade with China, a market of over one billion people, provides a great possibility for the Uruguay Round of GATT negotiations to set up another milestone in GATT history. China is approaching GATT as the Uruguay Round goes on. Unfortunately, however, a political turmoil has happened in China at the end of this study. Therefore, it is necessary to add some comments here.

Despite the repeated statements of Chinese leaders that China will not change its economic policy and continue with its reforms, the world trade community has showed a great concern over China's political situation and economic policy in the future. While it is early to predict exactly what consequences the recent events will bring about on China's membership, negotiations between China and the cps may slow down, particularly considering the political relationships between China and the West, as well as the economic adjustment underway in China.

Under the current circumstances, China's membership of GATT depends more on whether China will further its open policy and economic reforms to relieve the western concerns. It seems that China currently has no intention of making a drastic change in its economic policy. I personally do not think that China will make such a change as to go back to its old centrally planned system. It would be unfeasible for China to do so. The change that the reforms have brought about in the past decade is so fundamental and so deep-rooted across the whole nation that it is almost impossible for China to do so. Current China's economic situations and the continuance of the economic construction need badly foreign capital and technology, most of which can only be

obtained through opening to the western industrialized countries. The Chinese leaders also need the funds to consolidate the unstable political situations in China.

Although the western world have politically reacted strongly towards the crackdown of the pro-democratic movement by the Chinese government, they have expressed their belief that harsh economic sanctions against China may not be appropriate. They realize that such a policy, like the economic blockade in the 1950's and 1960's can only push the Chinese government back to the old system and would not make China give up its current political and ideological position. The U.S. has just recently opened its negotiations with China on China's GATT membership. This approach of the West has provided a possibility for expanding economic relations with China. The economic assistance and cooperation of the West will promote China's economic construction, thereby facilitating China's economic reforms and eventually political reforms.

In short, China is in a predicament. Western economic cooperation can help China out. The integration of China into the multilateral trade system of GATT based on reciprocity and non-discrimination is an important step to keep China from going back to the old system.

NOTES:

1. See Allen, "State Trading and Economic Warfare", 24 L. & Contemp. Prob. (1959), 256, P.258; R. Mason et al, The Economics of International Business (1975), p.7; Jackson, Legal Problems of International Business (1977), p.1045; Kostecki, East-West Trade and the GATT System (1979), p.10. The total value of China's imports and exports increased from US \$ 20.64 billion in 1978 to US \$ 83.78 billion 1987, accounting for US \$39.92 billion for exports and US \$43.84 billion for imports. Focus GATT Newsletters, 53-Feb./Mar. (1988).
2. For a detailed discussion, see Rabinovich, "The Legal Status of Soviet Foreign Trade Organization in View of New Soviet Legislation," 15 Int'l Law (1981), p. 233; Lasok, "Government Intervention and State Trading," 44 Mod. L. Rev. (1981), 249, p. 256; Ellis, "Decentralization of China's Foreign Trade Structures," 11 Ga.J.Int'l & Comp.L. (1981), 283, pp. 393-304,
3. The term "market economies" as used in this thesis, refers to countries in which private plans are the primary determinant of the production and distribution of goods and services.
4. The term "planned economies" as used in this thesis, refers to countries in which government plans are the primary determinant of the production and distribution of goods and services. Governments of such countries are generally described as "socialist". This does not apply to Yugoslavia, which is a socialist state, but no longer considered a planned economy. The term is interchangeable with "State trading countries" in this thesis.
5. See US Tariff Commission, Impact of Granting Most Favoured Nation treatment to the Countries of Eastern Europe and the People's Republic of China 5-9A (1974).
6. For a brief period in 1980 the USSR quietly explored the possibility of accession. Contracting Parties' resistance was strong. Discouraged from seeking accession, the Soviets followed the Chinese and sought observer status at the 1982 Ministerial Meeting. Later, they sought observer status at the GATT Council and in some of the MTN Code Committees. They have been discouraged in all these efforts and Soviet accession does not appear imminent. For a detailed analysis, see Kevin C. Kennedy, "The Accession of the Soviet Union to GATT", 23 J.W.T.L. (1988), pp. 23-39. For several years, the Chinese government has been evaluating

the pros and cons of GATT membership. In 1982 and 1983, China was granted "observer" status in GATT, allowing it to attend the annual sessions of the Contracting Parties. In 1984, China applied for and was granted special observer status in GATT, allowing it to attend meetings of GATT Council and other subsidiary GATT bodies. In July, 1986, China formally expressed its desire to rejoin GATT. In March, 1987, China introduced a memo on China's foreign trade regime to GATT Council. The Working Party was set up by GATT on March 4, 1987 to handle China's request. Up to now two substantive examinations of China's foreign trade regime were held in Geneva on 23 and 24 Feb. and 27 and 28 April 1988 respectively.

7. At present, Cuba, Czechoslovakia, Yugoslavia, Hungary, Rumania and Poland are socialist GATT contracting parties. See E. McGovern, International Trade Regulation--GATT, the United States International Trade Regulation--GATT, the United States and the European Community (1982), p. 15.
8. Patterson, "Improving GATT Rules for Nonmarket Economies", 20 J.W.T.L. (1986), 185, p.186; For some preliminary analysis of this relationship, see M. Kostecki, "Hungary and GATT", 8 J.W.T.L. (1974), pp. 401-19; M. Reuland, "GATT and State Trading Countries", 9 J.W.T.L. (1975), pp. 318-39; Roy Baban, "State Trading and the GATT", 11 J.W.T.L. (1977), pp. 334-53; M. Ianni, "The International Treatment of State Trading", 16 J.W.T.L. (1982), pp. 480-96; R. Patterson, "Improving GATT Rules for Nonmarket Economies", 20 J.W.T.L. (1986), pp. 185-205; M. Kostecki, supra n. 1.
9. See Economic Commission for Europe, U.N. Doc. E/ECE/270, Pts. I & II, Mar. 12, 1957; Martin Domke & John H. Hazard, "State Trading and the Most Favored Nation Clause", A.J.I.L., Vol. 52, 1958.
10. U.N. Doc. EPCT/C.II/46 (1946), p. 3; Jackson, "The General Agreement of Tariffs and Trade in United States Domestic Law", 66 Mich. L. Rev. (1967), p. 249.
11. See list of the agreements reproduced in the Hearings on Hearings on Extension of the Reciprocal Trade Agreements Act Before the House Comm. on Ways and Means, 79th Cong., 1st Sess, 38, 636, 932, (1948).
12. W. Dam, The GATT: Law and International Economic Organization (1970), pp. 10-15.
13. Bilateral approach was so disastrous to world trade that it was thought to be responsible to a great degree for World War II. See Kostecki, supra n. 1, p. 1.

14. Wilcox, A Charter for World Trade (1949), pp. 14-15. The other five A Charter for World Trade, principles are large trade volume, private enterprise, non-discrimination, stabilization policies and international consultation and cooperation.
15. U.N. Ecosoc. Res. 13, U.N. Doc. E/22 (1946); U.S. State Dept. Press Release, Dec. 16, 1945, reproduced in 13 Dep't State Bull., 970, (1945).
16. U.S. Suggested Charter, Dep't of State Pub., No. 2598 (1946).
17. Three of these were "Preparatory Committee" meetings: the First Session was held in London in Oct.-Nov., 1946; a meeting of the "Drafting Committee" of the Preparatory Committee convened at Lake Success, New York, in Jan.-Feb. of 1947 and the Second Session of the Preparatory Committee at Geneva along with GATT negotiations from Apr. to Oct., 1947.
18. Dam, supra n. 12, p. 10; Jackson, supra n. 1, pp. 396-97.
19. Jackson, Id., p. 397.
20. Id.
21. Id., p. 398.
22. Jackson, World Trade And The Law Of GATT (1969), pp. 36-41; supra n. 1, pp. 396-99; R. Gardner, Sterling-Dollar Diplomacy (1956); G. Wilcox, supra n. 14, pp. 3-52; W. Brown, The United States and the Restoration of World Trade, (1950) pp. 15-162; W. Diebold, The End of the ITO (Princeton Essays in International Finance No. 16, (1952); U.S. Dep't of State, Post-War Foreign Policy Preparation (1949); W. Dam, supra n. 12, pp. 10-15.
23. Willcox, supra n. 14, pp. 14-15.
24. Id.
25. Norman Burns, "The American Farmer and the ITO Charter", Dep't of State Bulletin (1949), pp. 215, 220.
26. Dam, supra n. 12, pp. 13-18.
27. During the course of the Bretton Woods Conference there was no indication that the Soviets would refuse to participate in the IMF and World Bank. See Regmond F. Mikesell, "Negotiation at Bretton Woods, 1944", in Raymond Bennett and Joseph Johnson(ed.), Negotiating with the Russians (1951), pp. 112-16.

28. supra n. 1, p. 2.
29. Id.
30. Alexander Gerschenkron, "Russia and the International Trade Organization", American Economic Review (March 1947) p. 625.
31. Kostecki, supra n. 1, p. 2.
32. Id.
33. See Preparatory Committee at the Int'l Conference on Trade and Employment, Verbatim, E/PC/T/C II/ST/PV/1, ECOSOC, London, Nov. 1946, p. 28; and Preparatory Committee of the U.N. Conference on Trade and Employment, E/PC/T 160, ECOSOC, Havana, August 1947, p. 8.
34. Kostecki, supra n. 1, p. 3.
35. Varga, "The Marshall Plan and the Approaching Economic Crisis in America", New Times, No. 39 (1947), pp. 5-7.
36. Kostecki, supra n. 1, p. 3.
37. Varga, supra n. 35.
38. Paul Baron, "Comments in Discussion on the Economy of the USSR", American Economic Review (March 1947) p. 648.
39. Ernest P. Penrose, Economic Planning for the Peace (1953), p. 112.
40. Third Session of the U.N.G.A. Official Records, U.N.G.A., Third Session, Second Committee (1949), Paris, PP. 154-60.
41. Official Records, U.N.G.A., Third Session (1949), Paris, ptI, PP. 594-96.
42. Id., p. 595.
43. See Kostecki, supra n. 1, pp. 7, 8, 10.
44. Official Records, ECOSOC, Twentieth Session, New York, July 1955, p. 77.
45. Kostecki, supra n. 1, p. 6.
46. Official Records, ECOSOC, Twentieth Session, N.Y., July 1955, p. 77.
47. Kostecki, supra n. 1, p. 8.

48. See Havana Charter, Art. 86. The provision of the Article permitted the belief that the ITO would have a more effective link with political organs of the UN than would the IMF and World Bank.
49. Kostecki, supra n. 1, pp. 6-7.
50. Particularly the U.S. During drafting sessions, the U.S. negotiators insisted on a strong statement in Article I of the unconditional MFN clause. They characterized the MFN as "absolutely fundamental". They considered the unconditional MFN treatment to be necessary to safeguard tariff concessions which "we negotiate on particular items (and necessary) to provide a part of the general quid pro quo for any normal trade quid pro quo agreement..." UN. Doc. EPCT/TAC/PV. 2, at 29, 46 (1947); U.N. Doc. EPCT/TAC/PV. 23, at 8 (1948), quoted in Jackson, supra n. 22, p. 252.
51. For the controversy over the MFN clause, see infra text.
52. supra n. 1, p. 10.
53. Id.
54. For detailed information about the strategic embargo on exports to socialist States, see infra text.
55. Kostecki, supra n. 1, p. 29.
56. Reuland, supra n. 8, pp. 323-24; The Soviet Union had taken the lead by urging on several occasions that unconditional non-discriminatory treatment be included in an All-European agreement on economic co-operation (Economic Commission for Europe, U.N. Doc., E/ECC/270, pts I and II, March 12, 1957). But western countries had declined to do so, for it was generally felt that it was so unsuited to the trade between the State trading countries and the market economies that western tariff reductions would amount to unilateral concessions. See Domke & Hazard, supra n. 9, p. 55-68.
57. See Kostechi, supra n. 1, pp. 12-14.
58. Espiell, "The Most Favoured Nation," 5 J.W.T.L. 29 (1971), p. 34; Kostechi, supra n. 1, p. 12.
59. Herzstein, "China and the GATT: Legal and Policy Issues Raised by China's Participation in the General Agreement on Tariff and Trade", Law & Policy in International Business, vol. 18, No. 2 (1986), 311, p. 378.

60. "(F)oreign trade conducted on the basis of bilateral trade agreement could invoke discriminatory trade policies" which are generally not compatible with GATT system. See Kostecki, supra n. 1, p. 58.
61. In the case of multilateral agreement, such as the General Agreement, the obligation to accord non-discriminatory treatment goes beyond the normal clause as it is binding on the granting State whether or not the original concession made to the beneficiary State is withdrawn. See Note, International Law Commission: "Most-Favored-Nation Clause," 12 J.W.T.L. (1978), 548, p. 550.
62. Kostecki, supra n. 1, p. 12.
63. Nove, "East-west Trade," in International Economic Relations (1969) 100, pp. 104-10.
64. Ianni, supra n. 8, pp. 480-1; Kostecki, supra n. 1, p. 14.
65. Patterson, supra n. 8, pp. 202-203; Ianni, supra n. 8, p. 480. Professor Kostecki believed that western European countries considered it more from economic interests. supra n. 1, pp. 16, 18.
66. See Ianni, supra n. 8, pp. 486-92; K. R. Gupta, "GATT and State Trading", Economic Internazionale (Feb. 1967) p. 57; Dam, supra n. 12, pp. 317-18.
67. Patterson, supra n. 8, pp. 185-86; M. Kostecki, supra n. 1, p. 14.
68. Kostecki, supra n.1, p.15. That attitude was inspired by numerous discussions which took place on that issue before and after World War II. For the discussions in the League of Nations, see G. W. Wickersham, Report of Sub-Committee on the Most-Favoured-Nation Clause (Geneva: League of Nations 1927). For the discussion in the UN, see 2 Yearbook of International Law Commission (1970), pp. 235-242.
69. See Dam supra n. 12.
70. Eric Wyndham White, "International Trade: Challenge and Response", an Address at the Fletcher School of Law and Diplomacy (Geneva: GATT Secretariat, 1959), p. 19.
71. Uster, "Most-Favoured-Nation," (Second Report) in Yearbook of the International Law (1970), Doc. A/CN4/228, P. 237.
72. Id., p. 235.

73. GATT Doc. ICITO/E.C.1/2.
74. For China's Instruments of Acceptance of the four Protocols, see GATT Statutes of Legal Instruments.
75. Including both domestic and international factors. See infra text of the thesis.
76. Chung-chou Li, "Resumption of China's GATT Membership," 21 J.W.T.L. 4 (1987), 25, p. 26.
77. Report of John S. Sercice of March 13, 1945, on conversation with Mao Tse-tung, in Foreign Relations of the United States (1945), Vol. VII, The Far East: China (1969), pp. 272ff. Quoted from Arthur A. Stahnke, China's Trade with the west: A Political and Economic Analysis, pp. 18-19.
78. China's policy on trade with western countries at that time was guided by two primary considerations: (a) to promote domestic growth and stability and (b) to serve foreign policy objectives ranging from attempts to buy goodwill to efforts to create strong relationships of economic and political dependency. See Eckstein, China's Economic Revolution (1977), p. 183.
79. For a detailed discussion of China's centrally planned system, see Chapter V of the thesis.
80. Supra n. 78, p. 183.
81. Forget, China's External Trade: A Canadian Perspective, (1971) p. 3.
82. Id.
83. 63 Stat. 7 (1949), as amended 50 U.S.C. App., (1964), pp. 2021-31.
84. U.S. Mutual Defense Assistance Control Act Administrator, The Strategic Trade Control System, 1948-1956, 9th Report to Congress (Washington, D.C.: GPO, 1957), pp. 12-18.
85. The Coordinating Committee was set up in November, 1949, with headquarters in Paris. This organization, originally made up of the U.S., the U.K., France, Italy, and The Benelux countries, was eventually enlarged to include all NATO members except Iceland; other countries and areas such as Switzerland, Austria, and Hong Kong, willingly cooperated. Its purpose was to define a list of embargoed goods and commodities in trade with the USSR and Eastern European countries-the "COCOM List". The heart of the system lies in

an agreed enforcement device, used by participating countries, essentially involving the matching of import items included on the list.

86. At that time, the Consultative Group was formed in secret by the U.S. and its European allies for a more effective embargo on trade in strategic goods. To this end, a Coordinating Committee was set up to formulate and administer unpublished lists of strategic goods subject to embargo.
87. Eckstein, supra n. p. 184.
88. This more restrictive policy has been called the "China differential".
89. That is, notification of a planned embargoed sale subject to there being no objection by other participating countries.
90. Eckstein, supra n. 78, p. 185.
91. Lewin, Foreign Trade Of Communist China (1964), P. 52.
92. Kostecki, supra n. 1, p. 1.
93. P.V. Theimaat, The Changing Structure of International Economic Law (1981) p. 5.
94. Wilcox, supra n. 14, Foreword.
95. See Kostecki, supra n. 1, pp. 16-17.
96. Id., pp. 8-9.
97. Id., pp. 17-18.
98. Id., p. 18.
99. Li, supra n. 76, p. 26.
100. Herzstein, supra n. 59, pp. 404-405. If this early policy had succeeded, the ideological component probably would have been muted and more emphasis given to pragmatic needs and the practical benefits of American trade and aid. Allen S. Whiting, "Chinese Politics and Foreign Trade", in China's Trade with the West, A Political and Economic Analysis (1972) p. 20.
101. Kostecki, "State Trading in Industrialized and Developing Countries", 12 J.W.T.L. (1978), p. 188.
102. The Suggested Charter, Art. XXVI; 2.

103. GATT Basic Instruments, 9th Supp.(1961), PP. 183-84.
104. See, e.g. Allen, "State Trading and Economic Warfare", 24 L. & Contemp. Prob. (1959), 256, p. 257; Fensterwald, "United States Policies toward State Trading", 24 L. & Contemp. Prob. (1959), PP. 369-70; Baban, supra n. 8, p. 388; Prof. Kostecki simply classified State trading in eight categories referring to external and internal economic and political ends. See supra n. 103, p. 188.
105. Kostecki, supra n. 1, pp. 43-44; Ianni, supra n. 8, p. 481.
106. Ianni, supra n. 8, p. 482.
107. Fensterwald supra n. 106, p. 382.
108. See Baban, supra n. 8, pp. 336-37; Allen, supra n. 1, p. 258; Brenscheidt, "The Legal Status of the Soviet Foreign Trade Monopoly in the FRG," 9 Int'l Law, 197, pp. 198-99; Ianni, supra n. 8, pp. 483-84.
109. This thesis focuses on problems of applying GATT to socialist States, State trading countries. However, it should be noted that they are not the only members of GATT which practice State trading. Many market economy members of GATT also engage in State trading albeit to a comparatively lesser extent. For a detailed study of State trading in other than socialist States, see Ouin, "State Trading in western Europe", 24 L. & Contemp. Prob. (1959), 398, PP. 415-46; Kostecki, supra n. 101, PP. 187-207.
110. For detailed studies on the economics of State trading, see Humphrey, "the Economic Consequences of State trading," 24 L. & Contemp. Prob. (1959), 276, pp. 276-85; Nove, "East-West Trade," in Int'l Economic Relations (P. Samuelson ed. 1969), p. 100; Vajda, "The Problems of East-west Trade", Id., p. 121.
111. Allen, supra n. 1, p. 258; Ianni, supra n. 8, p. 484.
112. Baban, supra n. 8, p. 336; Ianni, supra n. 8, p. 484.
113. In this aspect, the State may control trade by either excluding certain imports or determining quantities imported and standards of import quality. See Ianni, supra n. 8, p. 484.
114. In this area, State trading has the function equivalent to a tax because it obtains revenue for the State. Baban, supra n. 8, p. 336; Ianni supra n. 8, p. 484.

115. Id.
116. Kostecki, supra n. 103, p. 188.
117. Id., p. 203.
118. Id., pp. 188, 197, 198.
119. Id.
120. Id.
121. Baban, supra n. 8, p. 338; Ianni, supra n. 8, p. 483.
122. Ianni Id.
123. Id., pp. 484-85; Allen, supra n. 1, pp. 265-66.
124. Allen, supra n. 1, p. 265.
 125. See Ianni, supra n. 8, p. 485; Allen, supra n. 1, pp. 265-66.
126. Allen, supra n. 1, p. 265.
127. Id., p. 266; Ianni, supra n. 8, p. 485.
128. Allen supra n. 1, p. 266.
129. Ianni, supra n. 8, p. 485.
130. Ouin, "State Trading In western Europe," 24 Law And Comp. Prob., 398, pp. 415-46, (1959); Fensterwald, supra n. 106, p. 379.
131. Even if a bilateral agreement exists, the multidimensional nature of State trading can impede the stability of international trade, considering that the terms of trade which are discretionary are susceptible to the motivation of the decision-making of the State trader.
132. E. Wyndham White, "Order in International Trade Relations: the Role of the General Agreement on Tariffs and Trade", GATT, Inf/128, Article contributed to the National Provincial Bank Review (Nov. 1967); Max Sorensen, "Institutionalized International Co-operation in Economic, social and Cultural Field: GATT", in Manual of Public International Law (1968), Chapter 10, 64, p. 614; J. Jackson, supra, n. 22, Chapter 11; G. Curzon, Multilateral Commercial Diplomacy (1965), Chapter III; G. Secretarial, "The Most-Favored-Nation Clause in GATT: the Rules and Exceptions", J.W.T.L. (1970), pp. 791-803.

133. See N. Bomke, and N. Harzard, supra n. 9, pp. 55-56; Espiell, supra n. 58, p. 35.
134. Reuland, supra n. 8, p. 319.
135. See Eric Wyndham White, supra n. 70.
136. In the case regarding the rights of national of the US in Morocco, the I.C.J. pointed to the equal character of the mfn clause in the following terms: "the intention of the most-favoured-nation clause was to establish and maintain at all times fundamental equality without discrimination among all of the countries concerned" (Reports, 1952), p. 192.
137. M. Domke & N. Harzard, supra n. 9, p. 55.
138. See Espiell, supra n. 58, p. 35.
139. Kostecki, supra n. 1, p. 35.
140. Jackson, supra n. 1, p. 515.
141. Espiell, supra n. 58, p. 35.
142. See GATT, Art. XXIV.
143. GATT, Art. I:2.
144. See Law and Policy in International Business, 1980, p. 64, n. 27.
145. Wang Xuan, "On the Liberalization of Trade under GATT", Chinese Annual of International Law, (1986), 14, p. 48.
146. Dam points out that the many exceptions and shortcomings of GATT rules limit the extent to which GATT system can carry out this function, but when one considers State stating, the underlying assumption of GATT system is itself no longer applicable. supra n. 12, p. 318.
147. See Kostecki, supra n. 1, pp. 1-9; William Adams Brown, Jr. The United States and the Restoration of World Trade (1950), p. 114; Clair Wilcox, supra n. 14, pp. 101-2.
148. Kostecki, supra n. 1, p. 36.
149. Id.
150. For its importance in GATT negotiations, see Kostecki Id., pp. 37-39.

151. The Times, (London), 16 February, 1970.
152. See Id.
153. Espiell, supra n. 58, p. 36.
154. Id.
155. Kostecki, supra n. 1, p. 30.
156. For different opinions, see M. Domke & Hazard, supra n. 9, pp. 55-68; Hazard, "Commercial Discrimination and International Law", 52 A.J.I.L. (1958), pp. 495-98; Kostecki, supra n. 1, p. 35, 60, 61; R. Patterson, supra n. 8, pp. 185-86; Ianni, supra n. 8, p. 492; H. Jackson, supra n. 1, pp. 1046-47.
157. This does not apply to all socialist States. Since the introduction of the economic reform on January 1, customs tariff is an important regulator of trade in Hungary. China's reform currently underway is also towards this direction. Under these circumstances, the application of uniform tariff rate to all suppliers does not necessarily mean that they are treated equally.
158. supra n. 1, p. 40.
159. Id.
160. See Subcomm, on International Trade of the Senate Comm. on Finance, 96th Cong 1st Sess., 6MTN Studies Pt. 1, Agreements Being Negotiated in the Multilateral Trade Negotiations in Geneva-U.S. International Trade Commission Investigation No. 332-101, pp. 28-29 (Comm. Print 1979).
161. GATT, Art.II, 1(a).
162. GATT, Art. 1 (b).
163. See Leutwiter, Frizz, et al, Trade Policies For a Better Trade Policies For a Better Future: Proposals For Action (March 1985) pp. 18, 19.
164. Reuland, supra n. 8, p. 302.
165. Id.
166. Id., p. 320.
167. Id.
168. International Trade Policy and the GATT, 1947-1967, p. 184.

169. supra n. 8, p. 320.
170. supra n. 1, p. 41.
171. GATT, Article XVII; 1 (c).
172. Id., Article XVII; 1.
173. Id., 1 (a).
174. Id., 1 (b).
175. supra n. 12, pp. 321-22.
176. GATT, Ad. Article XVII; 2. The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sales of services.
177. Jackson, supra n. 1, p. 359; MTN Studies no. 6, pt. 3, p. 254.
178. Id. Ad. Article XVII; 1 (b).
179. Ianni, supra n. 8, p. 489.
180. GATT, Ad. Article XVII; 1.
181. See Dam supra n. 12, pp. 322-23; Ianni, supra n. 8, p. 489.
182. Ianni, supra n. 8, p. 488.
183. GATT, Ad. Article, XVII; 1.
184. See Ianni, supra n. 8, p. 488.
185. Kostecki, "Hungary And GATT," 8 J.W.T.L. 401, p. 404.
186. GATT, Art. XVII; 3.
187. Art.XVII, 4 (a, c,). In 1957, a set reporting rules was established for cps. See Ianni, supra n. 8, pp. 40-491; Baban, supra n. 8, p. 341.
188. supra n. 8, p. 200.
189. GATT, Art. XVII; 4 (b).
190. Id., Ad. Art. XVII, 4 (b).
191. Kostecki, supra n. 8, p. 404.
192. supra n. 8, p. 491.

193. Id.
194. Kosteci, supra n. 8, p. 404.
195. GATT, Art. XVII; 4 (d).
196. See Baban supra n. 8, p. 343-44.
197. GATT Doc. L/3633 (1972), p. 3.
198. See McGovern, Supra n. 7, pp. 161-62.
199. Reuland, supra n. 8, p. 319; Ianni, supra n. 8, pp. 487-88; Jackson, supra n. 1, p. 1046; Dam, supra n. 12, pp. 317-18.
200. Kosteci, supra n. 1, p. 42.
201. GATT, Art. XXX.
202. Id.
203. Jackson, supra n. 1, p. 73.
204. Id. pp. 81-82.
205. GATT, Art. XXXV.
206. GATT, Art. XXV, (5).
207. Jackson, supra n. 1, p. 541.
208. Id., pp. 94-95.
209. Id., p. 95.
210. Id.
211. Kosteci, supra n. 1, p. 42.
212. They are mainly: VI, XI:2(c), XII, XVIII:2, XIX, XX, XXV, XXVIII.
213. Article XII.
214. Art. XIII.
215. See Dam, supra n. 12, pp. 163-65; Jackson, supra n. 1, pp. 697-707.
216. supra n. 1, p. 43.
217. Patterson, supra n. 8, p. 200.

218. Vladimir Ilyich Lenin declared that "strengthen and regulate those State monopolies, which have already been put into effect and then prepare the monopolization of foreign trade by the State; without this monopolization we shall not be able to separate ourselves from foreign capital and from paying tribute." 22 Collected Works (3d. 1928-37), p. 449.
219. Id., p. 381.
220. Yang Chien-pei, China's Achievement in Rehabilitation and Development of National Economy (1956) p. 92.
221. Yeh Chi-Chuang (Minister of Foreign Trade at the time), "Speech at the 2nd Session of the First National People's Congress," Ren Min Ri Bao (People's Daily), Peking (July 30, 1955).
222. R. Carbaugh, International Economics (1980) p. 180. See Bornstein, "Economic Reform in Eastern Europe," reprinted in East European Economies Post-Helsinki, A Compendium of Papers Submitted to the Joint Economic Committee, 95th Cong., 1st Sess. 102 (1977). See generally Nonmarket Economy Imports Legislation, Hearing on S. 1531 Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance, 98th Cong., 2d Sess. (1984); Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries, Hearing on S.958 Before the Subcomm. on Int'l Trade of the Senate Comm. on Finance, 97th Cong., 2d Sess. (1982). See also Holmer & Bello, "The Countervailing Duty Law's Applicability to Nonmarket Economies," 20 Int'l Law (1986) 319; Horlick & Shuman, "Nonmarket Economy Trade and U.S. Antidumping/Countervailing Duty Laws," 18 Int'l Law (1984) p. 807.
223. See Mah, The Foreign Trade Of Mainland China, Aldine, Atherton/Chicago & New York (1972) p. 9-10.
224. Alland & Hiscock, "East-west Trade: the Philosophies & Practicalities of State Trading", Monash University Law Review, vol. 8, (1981-82) 135, p. 137.
225. 49 Fed. Reg. at 19, 377 (1984).
226. See J. Spero, The Politics of International Economic Relations, pp. 360-61.
227. Id. p. 360.
228. Id.
229. Id.

230. Id., pp. 360-361.
231. Id.
232. Allan & Hiscock, supra n. 226. They observed that considering socialist theory of foreign trade, it was difficult for westerners to concede them a status separate from the State, p. 138.
233. Polish Official Law Gazette, No. 18(1960).
234. Regarding the operation of the system, see Smith, The Planned Economies Of Eastern Europe (1983), p. 45-53.
235. Zheng Tuobin (Vice Minister of MOFERT), "Planning Further Foreign Trade Reforms," Intertrade Oct. 1984, p. 24. The State Council approved significant reforms of the foreign trade structure on Sept. 15, 1984. Id.
236. For a detailed study, see Ellis, supra n. 2, pp. 283-304; Allan & Hiscock, supra n. 226, pp. 137-39.
237. Dam, supra n. 12.
238. Kostecki, supra n. 1, pp. 2-4.
239. Id.
240. G.de Lacharriere, The Legal Framework for International Trade, p. 16 (GATT Working Paper undated).
241. See M. Endre Uster, supra n. 71, pp. 236-37.
242. However, as one western commentator stated, "so far as the west is considered, the inadequacies of economic calculations in the East constitute, of course, no sort of justification for discriminatory measures", see A. Nove, supra n. 63. He listed five reasons for western discrimination, but argued that they were all politically motivated. Id., p. 110-112.
243. Id.
244. See Extracts from Reports of the ECE Ad Hoc Group of Experts to Study Problems of East-west Trade in 2 Yearbook of International Law Commission (1970), p. 239.
245. Id.
246. Hazard, supra n. 156, p. 498.
247. Id., pp. 496-97.

- 248. Id., p. 496.
- 249. Note, supra n. 61, pp. 548-50.
- 250. supra n. 244, p. 240.
- 251. Id.
- 252. Kostecki, supra n. 1, p. 23.
- 253. Id., pp. 23-25; Jackson, supra n. 1, p. 362.
- 254. Kostecki, supra n. 1, p. 23.
- 255. Reuland, supra n. 8, p. 322.
- 256. GATT, 2 BISD, 36 (1952).
- 257. Id.
- 258. See Gerard Curzon, supra n. 132, p. 300.
- 259. See GATT, BISD, 4, March, 1969, for the text of the General Agreement.
- 260. Kostecki, supra n. 1, p. 25.
- 261. GATT, Art. XV 6.
- 262. GATT, 3rd Supp., BISD 43(1955), amended in 6th Supp., BISD 28 (1958).
- 263. Kostecki, supra n. 1, p. 24.
- 264. Id.
- 265. Id.
- 266. Jackson, supra n. 1, p. 363.
- 267. See Kostecki, supra n. 1, pp. 24-25.
- 268. Id.
- 269. Id., p. 25.
- 270. Id., pp. 24-25.
- 271. Id., p. 25.
- 272. Id., pp. 11, 25.

273. Declaration on Relation between Contracting Parties of the GATT and the Government of the Federal People's Republic of Yugoslavia, Agreement No. 60 App. C(1959).
274. See Kostecki, supra n. 1, pp. 25-26.
275. Id.
276. Jackson, supra n. 1, p. 363.
277. Kostecki, supra n. 1, p. 26.
278. GATT BISD, 8th Supp., 1962, pp. 59-62.
279. Kostecki, supra n. 1, p. 26.
278. Id.
281. For the declaration on provisional accession, see GATT BISD 11th Supp., 1962, p. 50. It applied only to those GATT cps that signed the declaration.
282. GATT BISD, 15th Supp., 1968, p. 53.
283. Jackson, supra n. 1, p. 363.
284. See GATT BISD, for Report of the Working Party on Accession, 14th Supp., 1966, pp. 49-59.
285. Kostecki, supra n. 1, p. 26.
286. Id., p. 25.
287. Id.
288. supra n. 1, pp. 26-27.
289. For the full description of the developments leading to the accession of Poland, see Kostecki, supra n. 1, pp. 27-29; Laczkowski, "Poland's Accession to GATT", 5 J.W.T.L. (1971), p. 110.
290. Kostecki, supra n. 1, p. 27.
291. GATT Doc. Spec. 102/58, Apr. 1958, p. 4; see Gadbow, "The Implications of Countertrade under the GATT", 5 Bus. & Cap. Market Law, pp. 355, 363 (1983), where the writer pointed out that a 1946 International Trade Organization draft would have required any country with a complete or substantial monopoly over imports to undertake a global import commitment.
292. Kostecki, supra n. 1, p. 28.

- 293. GATT, BISD, 8th Supp. 1960, pp. 11-14.
- 294. Kostecki, supra n. 1, p. 28.
- 295. Professor Kostecki attributed them to the failures to arouse the sufficient interests in its membership and to Poland's insignificance in foreign trade with the cps. Id., pp. 28-29.
- 296. The participation in the Kennedy Round played a significant role in Poland's accession to GATT. See Kostecki, Id.
- 297. GATT, "Protocol for the Accession of Poland," BISD, 15th Supp., 1968, pp. 46-52.
- 298. GATT, Id., pp. 109-112.
- 299. Baban, supra n. 8, p. 346.
- 330. Bohdan, "Poland's Accession to GATT", J.W.T.L. Vol. 5, No. 1, J/F 1971, pp. 110-19.
- 301. Reuland, supra n. 8, p. 326.
- 302. Kostecki, supra n. 1, pp. 11, 29.
- 303. Li, supra n. 76, p. 35.
- 304. Kostecki, supra n. 1, p. 11.
- 305. Id. pp. 29-30.
- 306. Id.
- 307. Id., p. 30
- 308. Id.
- 309. GATT, BISD, 18th Supp., 1972, pp. 94-97.
- 310. GATT Doc. L/3050, Aug., 1968, p. 1.
- 311. GATT, BISD, 18th Supp., 1972, pp. 5-10.
- 312. Reuland, supra n. 8, p. 329.
- 313. Id., pp. 332-33.
- 314. Id., p. 332.
- 315. Id.

316. Paul Maner and George Pall, Recent Developments in the Hungarian Financial System, Report for the U.S. Arms Control and Disarmament Agency, ed., Thad P. Alton, New York: Columbia University Press, 1971, Contract number ACDA/E-134/May 1971.
317. Kostecki, supra n. 1, p. 31.
318. Id., p. 97; Kostecki, supra n.8, p.401; Reuland, supra n. 8, p. 329.
319. Kostecki, supra n. 1, p. 97.
320. Id., pp. 11, 97-98.
321. These countries are: Albania, Bulgarian, Czechoslovakia, East Germany, North Korea, Mongolia, China, Poland, Romania, U.S.S.R., North Vietnam and Cuba.
322. GATT, BISD, 20th Supp., 1974, pp. 3-8.
323. This thesis concentrates on Poland, Romania and Hungary-who are State trading countries-whose experience in GATT has been particularly interesting. The relationships of Czechoslovakia, Yugoslavia and Cuba with other signatory countries are of rather limited significance in a general context. When Yugoslavia entered GATT, it was no longer a State trading country in the GATT sense; Czechoslovakia and Cuba, although now State trading countries, are special cases; they did not renegotiate their terms after the State trading system was introduced later.
324. Reuland, supra n. 8, p. 328.
325. Supra n. 168, p. 184.
326. For the developments leading to Poland's accession to GATT, see Laczkowski, supra n. 289, p. 110.
327. Cuba, Czechoslovakia and Yugoslavia acceded to GATT before Poland. However, Czechoslovakia and Cuba were not socialist States at that time. Yugoslavia acceded to GATT without having special arrangement. See Report of Working Party on Accession of Yugoslavia, BISD 14th Supp. (1966), p. 49.
328. BISD 15th Supp. (1967) p. 52.
329. Baban, supra n. 8, p. 346.
330. See Kostecki, supra n. 103, p. 187; Herzstein, supra n. 59, p. 381.

- 131. BISD , 18th Supp. (1972) p. 10.
- 332. Kostecki, supra n. 1, p. 96.
- 333. Id.
- 334. Kostecki argued that "fair share can not be related to the principle of nondiscrimination, which is what GATT about". See Id., p. 96.
- 335. GATT BISD, 20th Supp., 1974, pp. 37-41.
- 336. Kostecki, supra n. 1, p. 97.
- 337. See Reuland, supra n. 8, pp. 330, 331, 339. As mentioned earlier, some western countries supported the efforts of socialist States towards economic decentralization. The Hungarian economic reform had to overcome internal and external political and ideological restraints before being accepted. It thus seemed desirable for western countries to recognize the Hungarian tariff as an means of accession to GATT.
- 338. supra n. 8, p. 193.
- 339. The issue was of great economic importance to these socialist countries. It was estimated that western discrimination (both discriminatory qrs by the EEC and lack of non-discriminatory treatment on the U.S. market) cost Hungary, for example, an annual loss of \$20-50 m to its economy or about 6-15 per cent of the value of its exports to the western countries. See Kostecki, supra n. 1, p. 111, n. 21. However, Patterson thought the issue was of both political and economic importance, but what more important is the symbolic political importance of being accorded equal treatment because socialist States frequently failed to fulfil the quota allocated to them. supra n. 8, pp. 192-93.
- 340. Id.
- 341. BISD, 15th Supp. (1968), pp. 47-48; 18th Supp. (1972), p. 6; 20th Supp. (1974), p. 4.
- 342. Id.
- 343. BISD, 15th Supp. (1968), pp. 47-48.
- 344. See Patterson, supra n. 8, 194; Kostecki, supra n. 8, p. 417.
- 345. BISD, 18th Supp. (1972), p. 6.
- 346. Id.

- 347. supra n. 8, p. 194.
- 348. BISD, 20th Supp. (1974), p. 4.
- 349. Id.
- 350. BISD, 18th Supp. (1972), p. 95.
- 351. Patterson, supra n. 8, p. 193.
- 352. BISD, 17th Supp. (1970), p. 109.
- 353. BISD, 11th Supp. (1963), p. 73.
- 354. BISD, 18th Supp. (1972), p. 203.
- 355. Poland did not invoke XXIII of General Agreement on nullification or impairment. It seems that Polish government did not want to go so far.
- 356. This is best illustrated by GATT statistics. See BISD, 19th Supp. (1973), p. 115.
- 357. Ianni argued that bilateral arrangement was the proper way to regulate East-west trade. supra n. 8, p. 491.
- 358. supra n. 8, p. 194.
- 359. Id., pp. 194-95.
- 360. BISD, 15th Supp. (1968), pp. 48-49; BISD, 18th Supp. (1972), p. 20; BISD 20th Supp. (1974), p. 4.
- 361. BISD, 15th Supp. (1968), p. 48.
- 362. Id.
- 363. Id.
- 364. supra n. 8, p. 192.
- 365. Dam, supra n. 12, p. 318.
- 366. Id.
- 367. Kostecki, supra n. 8, p. 97.
- 368. Martin Domke & John Hazard, supra n. 9, p. 55-68.³⁶⁹ For detailed information, see Kostecki, supra n. 1, P. 92.; C.H. Von Platen, "Problems and Possibilities of East-west European Trade", Skandinaviska Banking Quarterly Review (July 1958), pp. 79-84.

370. The Work of the Economic Commission for Europe on Trade and Development, E/CON F. 46/PC/47 (Geneva: Dec. 1963.), p. 10.
371. Dam, supra n. 12.
372. Kostecki, supra n. 1, p. 129.
373. Id., p. 140.
374. Patterson, supra n. 8, p. 190.
375. this article provided for an obligation that members having a complete import monopoly had to promote the expansion of its foreign trade in accord with the purpose of the Charter. In consonance with this aim, they were to negotiate an arrangement with other members under which tariff concessions and other benefits would be paid for by commitments to import certain quantities of goods from their trading partners. The practice of GATT with socialist States was the same as this provision.
376. A fundamental argument is that the State trading countries-versus-market economy is not a useful distinction because a centrally planned, nonmarket economy is not the relevant characteristics as far as a country's status in GATT is concerned. The only relevant question is whether a country is able to fulfill its contractual obligations. It is considered that all socialist States are able to conduct trade with other GATT members in conformity with GATT rules to the extent possible under its economic system. Patterson, supra n. 8, pp. 204-205.
377. See Yuan Mu, "Discussing Questions Concerning the study of the Seventh 5-Year Plan Proposal", Lilun Yuekan (Theory Monthly), January 25, 1986, p. 1, translated in FBIS Daily Report-China PRC National Affairs, March 18, 1986, at k 3, k 8.
378. GATT Doc. L/5344.
379. GATT Doc. C/M/173, p. 2, Nov. 16, 1983.
380. Zhang Zeyu, "China Positions Itself to Rejoin GATT," Beijing Review, Mar. 10, 1986, p. 4; "China sends delegate to GATT," Milling & Baking News, Sept. 13, 1983, at 56. These facts were interpreted as China's willingness to accept the procedures for accession under Article XXXIII. However, China has consistently made it clear in its requests that its participation will always be "without prejudice to the Chinese Government's position with regard to its legal status in GATT." By means of "legal status in GATT", it refers to China's original membership in GATT. This position of China

- has been repeated in several of its official communications to the cps through the Secretariat, e.g., in its accession to the MFA (see Com. TEX/W/142), its request for participation as observer in the Sessions of the cps (see L/5344; L/5549), participation in the Council of Representatives (see L/5712), and various Statements by Chinese representatives.
381. Li, supra, p. 28. See also "China attend GATT Course," Wall ST. J., Aug. 27, 1980, p. 18, col. 3; "China Might Join GATT, Officials Confirm," Asia Wall St. J., Sept. 2, 1980, p. 3, col. 5.
 382. See Trade in Textiles, BISD, 31st Supp. 1985, pp. 293, 294-97. The MFA is open to all countries, whether or not contracting parties to GATT. The accession of China became effective on January 18, 1984.
 383. Li, supra n. 76, p. 28; Herzstein, supra n. 59, pp. 373-74.
 384. GATT Doc., L/5712 (Oct. 26, 1984); China to Attend Future GATT Council Meetings; Xinhua, reprinted in FBIS Daily Report China PRC National Affairs, Nov. 9, 1984, at A 2.
 385. "China Bids to Rejoin Trade Body," China Daily (Zhongguo Rebao), Beijing, 14 July, 1986.
 386. "China Moves Step Closer to GATT Membership," China Daily (Zhongguo Rebao), Beijing, 16 February, 1987.
 387. GATT Focus, No. 47, June 1987.
 388. Yang Ling, "Major Talks Ahead On Return To GATT," China Daily, Beijing, 16 April, 1987.
 389. For a detailed discussion of this system see the following analysis.
 390. Feng, "China's Membership of GATT: A Practical Proposal," 6 J.W.T.L., vol. 22, 1988, 53, p. 65.
 391. For detailed description of trading system of planned economy, see Wiles, P.J.D., Communist International Economies (1968).
 392. Id., pp. 30-42.
 393. Wang, Liy Sheng and Chen, Yujie, "Les Rapports Economiques avec L'Etranger" in La Modernisation Socialiste de la Chine, edited by Yu Gangyuan (1984), Volume 2, P. 361.

394. In 1957, the only two private foreign companies in China were the Hong Kong and Shanghai Bank and the Chartered Bank, whose operations were limited only to transactions involving the Chinese and British governments.
395. Wang and Chen, supra n. 393, p. 320.
396. Mah, supra n. 223, p. 674.
397. Yeh, Chi-Chuang, quoted in Mah, Id.
398. When the national plan was established, a general outline of annual economic plan must first be drafted on the basis of the overall economic goals and the planned growth of the key industries. Then this plan was put into more concrete terms in the form of output targets for the key industries. On the basis of output targets, physical balances of equipment, raw materials, fuel, capital construction and so on were formulated. The physical balances were designed to show the desired relations between all available resources and planned uses of all available items.
399. Bichelmeier, "China's Foreign Trade Monopoly: Institutions and Instruments, 1949-85," 15 Ann. d'Et Internat (1986), 191, p. 204.
400. Id.
401. Economic Information and Agency (1978), pp. 20-21.
402. Mah, supra n. 223, p. 675. For a further discussion of the supra institute, see the following text.
403. Klenner, Wolfgang, and Wiesegeart, Kurt, The Chinese Economy, Structure and Reforms in the Domestic Economy and in Foreign Trade, (1983), p. 109.
404. Bichelmeier, supra n. 399, p. 199.
405. Id., pp. 199-200.
406. Mah, supra n. 223, p. 677.
407. Bichelmeier, supra n., 399, p. 200.
408. It was founded in 1912 and was originally a State private bank and a leading foreign exchange agency of the Nationalist government. In 1950, the PRC took over the two-thirds share which had been held by the old government, but allowed the private shareholders, except those classified as "war criminal" to retain the remaining one-third. Theoretically, the bank was still one-third privately owned in 1977, but practically no mention has ever been made of its private

shareholders. The 1950 confiscation was incomplete because a substantial amount of the Bank's assets had been moved to Taiwan in 1949. Moreover, the branches which were located in countries maintaining diplomatic ties with Taiwan, such as the one in New York, remained under the control of the main office in Taipei. In 1971, the Taipei authorities converted that part of the Bank of China under their control into a "private bank with a total investment of US\$ 25 million and renamed it "the International Commercial Bank of China".

409. Other banks and financial institutions may also deal, with the approval of the SAEC, in foreign exchange business within the approved scope, subject to the control and supervision by the SAEC and its branch offices.
410. Bichelmeier, supra n. 399, p. 194.
411. Kuch, Y. Y., and Howe, C. "China's International Trade", China Quarterly, No. 100, Dec. 1984, p. 814.
412. U.N., The Guidebook for Trading with China (1983), p. 59.
413. Li, supra n. 76, p. 28.
414. Id., p. 31.
415. Id.,
416. Id.
417. See International Legal Material, 18(1979), pp. 1042-43. Art.2 of Trade Agreement between EEC and China contains similar provisions, p. 1460.
418. Li, supra n. 76, p. 31.
419. supra n. 419, Art. V (3), pp. 1046-47.
420. Id., Art. VI, pp. 1047-48.
421. Li, supra n. 76, p. 32.
422. Id.
423. Article 4(1), I.L.M., 17 (1978), p. 1460.
424. Li, supra n. 76, p. 32.
425. I.L.M., supra n. 419, pp. 1460-61.
426. L/6125, p. 4.

- 427. Zhang, Chongwen, "The System of Foreign Trade must be Reformed", in Aspects of Doing Business in China (1983), edited. by Jerome A. Cohen, pp. 14-15.
- 428. For detailed information, see L/6125, p. 11.
- 429. L/6125, p. 12.
- 430. Id.
- 431. Id.
- 432. Bichelmeier, supra n. 399, p. 216.
- 433. Id., p. 208.
- 434. A Commission System has been established in the reform. Under this system, foreign trade corporations will act as agents for the manufacturers in import and export deals, for which the manufacturers may give them a commission. All goods will be imported through the agency system except for a few essential commodities This system will create competition both in domestic and foreign markets.
- 435. L/6125, p. 11.
- 436. Bichelmeier supra n. 399, p. 211.
- 437. Id.
- 438. L/6125, p. 17.
- 439. L/6270, p. 115.
- 440. Id., p. 116.
- 441. Id., The import licensing listed in import licensing system can be readjusted.
- 442. L/6125, p. 17.
- 443. L/6270, p. 118.
- 444. Id., pp. 118-19.
- 445. Id., p. 120.
- 446. Id., p. 121.
- 447. Kostecki, supra n. 1, p. 73.
- 448. L/6125, p. 13.

- 449. L/6270, p. 86.
- 450. Id., p. 100.
- 451. L/6125, p. 14.
- 452. Id.
- 453. The Regulations of twenty-four, Nov. , 1986.
- 454. L/6125. p. 14.
- 455. See Code on Customs Valuations, Article 8, BISD, Supp., 1980.
- 456. L/6270, p. 98.
- 457. L/6125, p. 15.
- 458. Adopted on Sept. 13, 1985 at the 101st Session of the Standing Committee of the National People's Congress and promulgated by the State Council for trial implementation.
- 459. L/6270, pp. 104-5.
- 460. L/6125, p. 15.
- 461. Id.
- 462. Id.
- 463. L/6270, pp. 102-3.
- 464. Beijing Review, No. 33, 1983, p. 9.
- 465. L/6125, p. 20.
- 466. L/6270, pp. 147-48.
- 467. Id., p. 145.
- 468. L/6125, p. 20.
- 469. L/6270, p. 148.
- 470. Id., p. 145.
- 471. L/6125, p. 21.
- 472. GATT Article XV provides that "in all cases in which the contracting parties are called upon to consider or deal with problems concerning monetary reserves, balance of

payments or foreign exchange arrangements, they should consult fully with the IMF... and shall accept the determination of the Fund". GATT, BISD, 16th Supp., 1969, p. 24.

473. L/6125, p. 19.

474. L/6270, p. 135.

475. Id., p. 135.

476. Id.

477. Id., p. 137.

478. L/6125, p. 19.

479. L/6270, p. 139.

480. Id.

481. Id.

482. Id., p. 140-41.

483. They are Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Island.

484. Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Nantong, Lianyungang, Shanghai, Ningbo, Wenzhou, Fuzhou, Zhanjiang and Beihai.

485. See Regulations on Special Economic Zones in Guangdong Province Adopted at the Fifteenth Session for the National People's Congress Standing Committee on August 26, 1980, reprinted in 19 Int'l Legal Materials, 1454 (1980); see also Nishitaten, "China's Special Economic Zones: Experimental Units for Economic Reform," 32 Int'l & Comp. L. Q. 175, pp. 176-77 (1983). The Fifteenth National People's Congress created the SEZs in reaction to the call for the four modernizations of agriculture, industry, science and technology, and national defense following the purge of the Gang of Four. Id. pp. 175-76, n. 4. Zones to promote foreign commerce have long historical roots. R. Thoman, Free Ports and Foreign Trade Zones, 11-12 (1965). Traditionally, goods produced in Trade Zones, special economic zones have been assessed lower tariffs than goods from other zones or States. See U.N. Industrial Development Organization, "Free Trade Zones Around the World and their Use for Export Oriented Industrial Operations" 5, U.N. Doc. ID/WG. 112/26 (1972); Note, "Foreign Trade Zone Manufacturing: The Emergence of a Free Trade Investment", 9 Va. J. of Int'l L., 444 (1969).

486. See L/6125, p. 22.
487. L/6270, p. 152.
488. Id.
489. Id., pp. 152-53.
490. Chen, An, "To Open Wider, Or To Close Again: China's Foreign Investment Policies and Laws", 6 N.Y.L.Sch Int'l & Comp. L. (1984).
491. Pattison, "Special Economic Zones In The People's Republic Of China: The Provincial Experiment", 1 China Law Rep., 141, pp. 151-55.
492. See generally Thoman, supra n. 485; Note, supra n. 485.
493. Pattison, supra n. 490, p. 143, n. 12 (citing C.S.D. 79-41, U.S. Customs Service). Sulfathiazole, a chemical that was "substantially transformed" within a SEZ into sulfathiazole sodium, was assessed a column one tariff, rather than a column two tariff (the "column" that most goods from the centrally planned economies fall under) by the U.S. Customs Service in the example presented by Pattison.
494. Sheridan, "The Accession to GATT of the People's Republic of China: New Challenges for the World Trade Regime," 23 Willamette Law Review, 3, Fall 1987, 843, p. 853.
495. Fenwick, "Evaluating China's Special Economic Zones", 2 Int'l Tax & Bus. Law, 376, pp. 385-87 (1984).
496. Four major steps has been taken in opening to the outside world. First, in 1980 it applied special policies and flexible measures to Guangdong and Fujian provinces and then set up five SEZs, i.e., Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Island; second, thirteen coastal cities were opened to the outside world in 1984; third, in 1985, the Changjiang (Yangtze) River and Pearl River Deltas and the triangular area in Southern Fujian Province were also open to the outside world; fourth, the economic development strategy for coastal areas went into implementation in 1987.
497. Li, supra n. 76, p. 29.
498. By "planned commodity economy", it refers to an integration of plan and market. The word "commodity" in the "commodity economy" does not refer to "primary products", see L/6270, p. 2.

499. Under this system, self reliance was the guiding principle of China's foreign trade. China was to "manufacture by itself all the products it needs general economic construction on the basis of its own human material and financial resources", whenever and wherever possible and to carrying out of such principles was "clearly incompatible with the concept of international division of labor, or with the theory of comparative advantage in foreign trade". See Mah, Feng-hwa, "Foreign Trade" in Eckstein, Galenson and Liu, Economic Trends in Communist China (1968), p. 673.
500. There had been a reassessment for Richard's theory of comparative advantage among Chinese economists before it was accepted in China. The theory of comparative advantage had been considered in China as a theory of the nature of oppressing and enslaving other countries. International trade was thus equaled to imperialistic exploitation. See Shu-yun Mu, "Recent Changes in China's Pure Trade Theory," The China Quarterly, June, 1986, No. 106, pp. 293-96.
501. Li, supra n. 76, p. 29. As a Chinese writer puts it: "If China is to become a relatively advanced socialist country with decent standard of living for its people within a short period of time, we must correctly understand and make use of the international division of labor and our comparative advantages". Xu, Di-xin and others, China's Search for Economic Growth, Beijing, New World Press, 1994, p. 173.
502. China's attitude toward GATT in the 1950s and 1960s was not favorable. In the viewpoint of the Chinese, GATT was a "rich man's club", and China preferred to join the United Nations Conference on Trade and Development (UNCTAD).
503. See supra text, Chapter One.
504. Li, supra n. 76, p. 30.
505. For a detailed discussion of China's current trade system, see infra text.
506. See the following text for a detailed discussion.
507. Li, supra n. 76, p. 30.
508. Export is for import has long been one of the principal Chinese trading principles. As commented by Mr. Bichelmeier: "exports were not an independent objective, but a function of the import plan. This policy reflected the Chinese striving for self-reliance, which was emphasized even more when the Sino-Soviet relations deteriorated in 1960," supra n. 399, p. 194.
509. Li, supra n. 76, p. 30.

510. See Kostecki, supra n. 1, pp. 58-59, "(F)oreign trade conducted on the basis of bilateral trade agreements could involve discriminatory trade policies", which are generally not compatible with the GATT system"; Note, supra n.61, pp. 548, 549-50.
511. Li, supra n. 76, p. 30.
512. See Herzstein, supra n. 59, p. 378; Li, supra n. 76, p. 30.
513. See supra text. Decision of the General Committee of the CCP on Reform of the Economic Structure, (1984). Yet, the international community is suspicious about China's ability to conduct the reform in the long term. See generally Halpern, "China's Industrial Reforms," 25 Asian Surv., p. 998 (1985).
514. Supra n. 59, p. 381.
515. Herzstein believed that this right to participate rule-forming process would be more important for China that the special legal rights gained immediately upon membership. Id., p. 379.
516. Id.
517. Jackson, supra n. 1, pp. 160-62.
518. See Herzstein, supra n. 59, p. 379, n. 28.
519. Id., p. 380.
520. See the following text,
521. Herzstein, supra n. 59, p. 380.
522. See "China Tight Textile Rules," N.Y. Times, Oct. 3, 1984, at D 18, Col. 5.
523. Li, supra n. 76, p. 30.
524. See supra text for a detailed discussion.
525. See Herzstein, supra n. 59, pp. 384-399.
526. Id.
527. Li, supra n. 76, p. 31.
528. People's Daily, Beijing, 12 July 1986.

- 529. Li, supra n. 76, p. 44.
- 530. People's Daily, Beijing, 10 July, 1986.
- 531. Li, supra n. 76, p. 44.
- 532. People's Daily, Beijing, 10 July, 1986.
- 533. Quoted from Li, supra n. 76, p. 42.
- 534. Feng, supra n. 390, p. 58. For a discussion of economic issues, see Herzstein, supra n. 59, pp. 374-77, 383-399.
- 535. For an analysis of the argument, see Herzstein, Id., pp. 403-408.
- 536. Feng, supra n. 390, p. 58.
- 537. Id., p. 59.
- 538. Herzstein, supra n. 59, p. 386.
- 539. Article 11:3 of the Agreement on Trade Relations between U.S.A. and PRC.
- 540. U.S. International Trade Commission, Pub. No. 1610. Tariff Schedules of the U.S. Annotated 4-5(1985), list of GSP beneficiary countries.
- 541. 19 USCS 2462(b)(1) (1982).
- 542. The U.S. cannot grant the GSP treatment to Communist nations that are not members of the GATT and the International Monetary Fund (IMF), and that do not receive MFN treatment.
- 543. Herzstein, supra n. 59, p. 382.
- 544. People's Daily, Beijing, 10 July, 1986.
- 545. Herzstein, supra n. 59, p. 386.
- 546. Li, supra n. 76, p. 37.
- 547. Id. Herzstein, supra n. 59, p. 388.
- 548. L/6125, p. 11.
- 549. See "China Moves To Combat High Inflation"; "Inflation In China Inspires Love, Hate", The Ottawa Citizen, Sept. 13, 1988, A 15, C 12.
- 550. Sheridan, supra n. 494, p. 846.

- 551. Li, supra n. 76, p. 37.
- 552. L/6125, p. 11.
- 553. For a detailed comparison of Chinese and Hungarian economic reforms, see Jan S. Prybyla "Mainland China and Hungary: To market, To market", Issues & Studies, Jan., 1987.
- 554. GATT BISD 20th Supp. 1974, p. 3.
- 555. Li, supra n. 76, p. 36.
- 556. Feng, supra n. 390, p. 63.
- 557. Id.
- 558. For instance, it guarantees increases in other countries' export sales, the commitment is easily verifiable, and the importing country is free to set its own import priorities. Herzstein, supra n. 59, p. 387.
- 559. Id.
- 560. Id.
- 561. Id.
- 562. Li, supra n. 76, p. 38.
- 563. Feng, supra n. 390, p. 63.
- 564. Li, supra n. 76, p. 38.
- 565. See Sheridan, supra n. 494, pp. 845-46. He describes China's economy is in transition from a regressive product of the Cultural Revolution to a progressive economy with an announced annual goal of \$ 200 billion (U.S.) in exports by the year 2000.
- 566. Id., p. 846.
- 567. Li, supra n. 76, p. 30.
- 568. Id.
- 569. Id.
- 570. Feng, supra, n. 390, p. 65.
- 571. See Note, "An Argument for Freer Trade: The Nonmarket Economy Problem under the U.S. Countervailing Duty Law," 17 New York University Journal of Int'l Law and Policy (1985), 407, pp. 426-30.

- 572. Agreement on Interpretation of Articles, VI, XVI, and XXIII Of the General Agreement on Tariffs and Trade (Relating to Subsidies and countervailing Measures), Apr. 12, 1979, Annex, GATT Doc. MTN/NTM/W236; reprinted in Agreements Reached in the Tokyo Round of Multilateral Trade Negotiations, H. R. Doc. No. 153, 96th Cong., 1st Sess. 257-307 (1979), also reprinted in 18 Int'l Legal Materials (1979), pp. 579-627.
- 573. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT Agreement on Tariffs and Trade (Relating to Subsidies and Countervailing Measures).
- 574. Agreement on Implementation Article VI of the GATT (Antidumping), GATT Doc., MTN/NTM/W 232 of April 9, 1979, reprinted in 18 Int'l Legal Materials, 621-38 (1979).
- 575. Sheridan, supra n. 494, p. 848.
- 576. For a discussion of the comparative advantage theory of international trade, see C. Kindleberger, Int'l Economics (5th ed. 1973) pp. 17-21 .
- 577. supra n. 571, p. 427.
- 578. GATT Article VI, 1(2) provides that a party may "take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate".
- 579. Note, supra n. 571, p. 427.
- 580. Id.
- 581. Id., p. 428.
- 582. See Sarah L. Collins, "Countervailing Duties and Alternative Trade Remedies for Imports from Nonmarket Economies", Virginia Journal of International Law, Vol. 27:3, (1987), pp. 679-727; Christopher F. Corr, "The NME Import Regulation Dilemma: Two Proposals for a New Regulatory Approach", N.C.J. Int'l L & Com. Reg., Vol 12, (1987), pp. 59-103.
- 583. 80/F. 2d 1308 (Fed. Cir. 1986),
- 584. Id., p. 1314.
- 585. Id., p. 1316.
- 586. H.R. Rep. No. 40, 100th Cong., 1st Sess, 157 (1987).

587. See Corr, supra n. 584, p. 63.; Horlick & Shuman, "Nonmarket Economy Trade and U.S. Antidumping and Countervailing Duty Laws, 18 Int'l Law, 807, 818-19 (1984).
588. Sheriden, supra n. 494, p. 852.
589. Jackson, supra, n. 1, p. 802.
590. GATT Doc. CP/54, Mar. 8, 1950.
591. Li, supra, n. 76, p. 44.
592. Czechoslovakian government, for instance, made a statement to the effect that it did not recognize the validity of China's withdrawal from the Agreement.
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595. Herzstein, supra, n. 59, p. 404.
596. Li. supra, n. 76, p. 44.
597. GATT Doc. SR 27/1, pp. 1-3 (Nov. 19, 1971).
598. supra n. 59, p. 405.
599. Id., p. 407.
600. Id., p. 406, note 119.
601. Id., p. 407.
602. Li, supra n. 76, p. 45.
603. Feng, supra n. 390, p. 59.
604. supra n. 59, p. 408.
605. Id., p. 409.
606. Id., pp. 410-13.
607. Feng, supra, n. 390, p. 63. These codes are: Agreement on Technical Barriers to Trade (Standards Code), Agreement on Implementation of Article VII of the GATT (Code on Customs Valuation), Agreement on Interpretation and Application of Article VI, XVI and XXIII of GATT. For details see 26 BISD (1980).
608. Feng, Id., pp. 63-64.

- 609. Id., p. 64.
- 610. Li, supra n. 76, p. 30.
- 611. Id., p. 46.
- 612. Id., pp. 46-47.
- 613. Id.
- 614. Kostechi, supra n. 1, p. 18.
- 615. However, there is a problem of criteria to decide the degree or extent of economic freedom. As Mr. Herzstein questioned, what market conditions are needed for GATT accession. How much economic freedom and decentralization will be necessary to create a "market" that is accepted market economies and how much central planning can be preserved, consistent with this freedom and decentralization. supra n. 59, p. 395.

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