Fifty Years of GATT

When the General Agreement on Tariffs and Trade (GATT) entered into force on 1 January 1948, the intention was to incorporate it subsequently into a comprehensive world trade order and to set up an International Trade Organization (ITO) to enforce its rules. Because, however, the ITO was rejected by the US Congress, GATT remained a provisional solution for nearly fifty years. Not until the Uruguay Round, which lasted from 1986 to 1993, was the world trading system enlarged beyond mechandise trade to encompass other areas and GATT made into a definitive organization. The World Trade Organization (WTO), which started work on 1 January 1995, is the institutional superstructure for the reformed GATT and all other agreements concluded as part of the Uruguay Round.

The cornerstone of the old and reformed GATT is the principle of non-discrimination with its two facets, most-favoured-nation treatment and national treatment. The obligation of most-favoured-nation treatment requires that any trade concessions accorded a country must be immediately and unconditionally conferred on all other GATT member states. Bilateral liberalization is thus automatically multilateral. According to the national treatment principle, foreign goods must be treated in the same way as similar domestic products. Generally, customs duties are the only permissible means of protecting national production. GATT of course makes significant exceptions to these general rules, which have prompted heated disputes in the past and will be a problem for the WTO in the future.

Most-favoured-nation treatment was already a bone of contention amongst the founders of GATT towards the end of the Second World War. Then, the British were unwilling to give up their Commonwealth preferences dating from 1932, while the Americans insisted on a strict application of unconditional most-favoured-nation treatment. Agreement was finally reached on retaining existing preferences for the time being. New preferences would only be permissible in free trade areas and customs unions. This is how Article 24 of GATT came about, which grants an exemption from the most-favoured-nation principle for such economic areas in relations with non-member countries. Another exception to the non-discrimination tenet are trade preferences in favour of - and amongst - developing countries based on the "waiver" of 1971 and the "enabling clause" of 1979.

When two or more countries join to form a regional trading bloc, this can cause problems. There are trade creating effects that raise income in member states as well as trade diverting effects that can mean considerable disadvantages for non-members. So it is quite possible that the aim of creating regional trading blocs is to assert own economic interests at the expense of non-member states. This is a good reason for applying strict criteria for deviations from the most-favoured-nation rule, but this has not been done in the past. More important than most-favoured-nation treatment of trading partners, however, is the multilateral removal of trade barriers since with the progressive opening of national markets bilateral and regional preferences - and free trade rules - diminish in importance.

Into the second half of the sixties, multilateral trade policy focussed on rolling back customs duties. GATT achieved marked success here, even though major sectors such as agriculture and textiles and clothing were largely exempt from the general GATT rules. In the seventies, liberalization faltered. Customs barriers continued to be dismantled but non-tariff

barriers began to play a greater role. These include so-called grey-area measures (voluntary' export restraints, orderly marketing arrangements etc.), the exclusion of foreign tenders from public procurement contracts but also industrial policy abuse of anti-dumping measures, subsidies and countervailing duties as well as national regulations, such as technical standards.

In the Tokyo Round of GATT from 1973 to 1979, non-tariff measures figured for the first time as a major negotiating issue alongside customs duties. The talks resulted in codes relating to antidumping, subsidies and countervailing measures, technical standards, public procurement, customs valuation and import licensing procedures. Many of the rules were so vague as to leave much leeway for protectionist abuse. Nor was the problem of grey-area measures solved in the Tokyo Round, as no agreement was reached in the reforming of the safeguard clause (Article 19 of GATT) as to whether selective application of safeguard measures against single countries was to be allowed in future. The meagre success of the Tokyo Round was a major reason for the continued growth in non-tariff trade barriers towards the end of the seventies and in the eighties.

Increasingly, bilateral voluntary restraint agreements not covered by GATT came to replace non-discriminatory temporary safeguard measures according to Article 19 of GATT. In antidumping and countervailing measures, countering unfair trade practices became progressively less of a priority with the stress shifting to protecting industries unable to withstand full international competition. Subsidies were geared less and less to correcting market failure and increasingly to acquiring advantages for local firms. Resulting disputes between GATT members were often settled outside GATT with no account taken of the trading interests of third countries. This is why non-tariff barriers took an even more prominent place on the agenda of the Uruguay Round. The need to reach a substantive outcome posed a serious challenge to the signatory states and prolonged negotiations.

The Uruguay Round brought about a comprehensive renewal and extension of the world trade order. In particular, it subjected the codes negotiated in the Tokyo Round to a thorough reappraisal. The antidumping provisions were defined more closely, rules concerning subsidies and countervailing measures were given a more precise wording. On top of this, the Uruguay Round spawned a number of new agreements, which included the application of safeguard measures, agricultural trade and trade in textiles and clothing. The safeguard clause agreement expressly prohibits "voluntary" export restraints, orderly marketing arrangements and similar measures on the import or export side and calls for their termination by 1999 at the latest. In exchange, the agreement provides for the selective application of the safeguard clause under the auspices of GATT.

Trade with farm produce is to be placed on an equal footing with industrial products within a transition period of six to ten years; all quantitative restrictions must be converted into customs duties by the year 2001 (by 2005 for developing countries). Also foreseen is the reduction of import protection, domestic support measures and export subsidies. World trade in textiles and clothing is also scheduled to fall under the general GATT rules. The new textile agreement prescribes elimination of existing quotas in four stages by the year 2005. They might however be replaced by antidumping measures, subsidies and duties as well as safeguard measures with the selective option.

Of vital importance to the smooth operation of the World Trade Organization is its dispute settlement procedure. A unified procedure has been instituted applying to all Uruguay Round agreements, a major improvement over the old GATT arbitration method. It is no longer possible for the states involved to prevent the dispute settlement body from setting up a panel; the panel's report can only be rejected unanimously. A standing appellate body has been introduced whose ruling can also only be rejected unanimously. If the state involved does not implement the report's recommendations, the complainant can demand compensation and possibly resort to sanctions. The new arbitration procedure is an effective instrument against the many kinds of protectionism and could also be taken as an opportunity to address new trade policy issues.

Harald GroBmann