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Caught between Self-Destruction and Reform

by Wilfried Lütkenhorst, Bochum*

While neomercantilist policy measures, in the form of both import protection and export subsidization, are still gathering momentum and are just entering their second decade with evidently high growth rates, the dynamic post-war growth of world trade itself has at least temporarily come to a halt: trade fell in volume in 1981 by just under 1 % and, in 1982, by about 2 %. A new round of multilateral trade negotiations is in prospect for 1985, during which further tariff reductions will be on the agenda, but the main item for discussion will be questions surrounding a reform of GATT which emerged from the Tokyo Round. The following article seeks to establish the true significance of the GATT principles today, investigates the causes of the erosion of discipline within GATT, and deals with important aspects of present efforts to introduce reforms.

Up to now the most-favoured nation clause – first formulated in Cobden's Anglo-French Treaty – has been the manifestation of a liberal multilateralism being the basic trade policy approach underlying the foundation of GATT. The MFN-clause demands that any preferential treatment in terms of trade policy applied to another country (including also non-members of GATT) be immediately and unconditionally applied in the same way to all other GATT signatories. Discrimination of any kind against imports from particular countries is thus prohibited, bilateral steps towards liberalisation automatically become multilateral in effect, implying that the deepening of the international division of labour is not being hindered by selective protectionist measures.

Diminishing Significance of the MFN-Principle

It has, however, become apparent in recent years that a large and rapidly increasing proportion of world trade is taking place outside the most-favoured-nation framework:

□ Exceptions from the fundamental MFN-principle were made from the start for preference systems already in existence before GATT came into force and also, under certain specifying conditions, for free trade areas and customs unions. The intention was to support regional approaches towards trade liberalization as second-best solutions compared with global liberalisation.

□ Further exceptions from the MFN-principle have emerged 1971 with the General System of Preferences

(GSP) which, based on a GATT-waiver, is now in force in most industrial countries with the aim of selectively supporting the exports of developing countries. While the GSP's impact in terms of additional LDC exports is still subject to controversy compared to the impact of further MFN tariff reductions,¹ in terms of its impact on trade policy in general and the MFN-principle in particular, the GSP should not be considered a major blow against the spirit of GATT: a particular group of countries was awarded a preferential status according to the *consensus* of the contracting parties in order to give the former easier access to export markets, i.e. following trade liberalising motives with a development policy orientation.

□ Certainly the severest blow suffered by the MFN-principle in recent times has been the unfettered growth of non-tariff barriers to trade (NTBs). It has to be pointed out strongly that tariffs hardly count any more as trade barriers in the industrialised nations: as a result of the Tokyo Round the weighted average of nominal tariffs on industrial goods is now at 4.4 % for the USA, 2.8 % for Japan and 4.7 % for the EC.² It may thus be a considerable waste of resources to devote still more negotiating energies to further tariff reductions which will only be of symbolic value in the future. In contrast to this – and the link is obvious – NTBs are showing rapid increases both in the various forms they take and the scope of their effect, to the extent that 34 % of industrial

¹ Cf. A. Sapir: Trade Benefits under the EEC Generalized System of Preferences, in: *European Economic Review*, Vol. 25 (1981), p. 339 ff.; R. E. Baldwin, T. Murray: MFN Tariff Reduction and Developing Country Trade Benefits under the GSP, in: *The Economic Journal*, Vol. 87 (1977), p. 33 ff.

² Cf. GATT, *The Tokyo Round of Multilateral Trade Negotiations*, Vol. II, Geneva 1980, p. 33.

* Ruhr University, Bochum.

production in the USA is now protected in this way, 32 % in France and 20 % in West Germany.³

A crucial aspect for the future role of the MFN-clause is the fact that a large proportion of NTBs is discriminatory in nature, i.e. that imports from particular countries are selectively restricted. The Multi-Fibre Arrangement (MFA), for instance, which has been renewed for the second time now, has accomplished the remarkable feat of tying a dense, comprehensive restrictive net of *bilateral* "voluntary" self-restraint agreements under the GATT label of *multilateral* negotiations: MFA III now controls about 84 % of world trade in textiles and clothing and contains more than 3,000 quotas applying to specific countries or products.⁴ Moreover, these quotas have become the more restrictive the higher the competitiveness of the exporting countries has been in the past. Although other sectors have a long way to go before they may achieve the systematic, precise application of the protective measures in the textiles sector, the proliferation of "voluntary" export restraints (VERs) and orderly marketing agreements (OMAs) is now also proceeding to the steel and automobile industries, consumer electronics, etc.

□ The effect of NTBs in violating the most-favoured-nation principle has long been obvious, whereas other developments are taking place rather more unnoticed. This applies in particular to the increasing significance of counter-trade in all its forms.⁵ Although there is argument over the proportion of world trade this embraces (estimates vary from 10 % to 25 %), its development shows a clear upward trend. Various motives can spur counter-trade deals (securing particular sources of raw materials imports; saving scarce foreign exchange) and they can assume a variety of forms. In the past, they have tended to be in the forefront in the context of trade with the Eastern bloc countries which have been chronically short of foreign exchange. At present, though, it has to be said that counter-trade is being practiced along a broad front, including a large number of developing countries, no

small factor in this latter development being the serious deterioration in raw material prices and the resultant balance of payments problems. The most prominent current example is without doubt the counter-purchase policy being conducted by Indonesia which was initiated in early 1982 with the aim of encouraging non-traditional exports.⁶

Although, in contrast to NTBs, counter-trade arrangements do not imply a clear violation of the principles of GATT, they do of course run counter to its *multilateral* trading philosophy. They are frequently used as an instrument for bringing some balance to *bilateral* trading relationships, which will certainly jeopardise the flexibility and ultimately the growth potential of the international division of labour. Counter-trade deals make both the volume and direction of any country's foreign trade dependent on *bilateral* balance of payments criteria and in this respect are at least indirectly opposed to the basic MFN principle. On the other hand it is understandable that arguments centred on optimising the system of the international division of labour find little sympathy in the countries affected. Indeed one of the reasons given to justify counter-trade measures in economic policy terms is that they are intended to compensate for the protectionist measures taken by the industrialised nations.⁷ The trade policy approach now adopted by industrialised countries may therefore play a part in determining whether the growing move towards counter-trade arrangements will be remembered as a temporary phenomenon or whether it will become a long-term trend in international trade relations.

Taking together the effects so far outlined – and still ignoring that a substantial portion of world trade is by now attributable to intra-firm trade within the multinationals – one is forced to the conclusion that at most just over a third of world trade is still conducted on a non-discriminatory basis.⁸ More than half, on the other hand, falls into the category of managed trade or of trade involving preferential treatment.

New Interpretation of Reciprocity

Another fundamental GATT principle, that of reciprocity, is threatening to lose its significance or at least to be freshly interpreted with a protectionist bias.

³ Cf. R. B. Reich: Beyond Free Trade, in: Foreign Affairs, Vol. 61 (1983), p. 786. A more precise overall view of the relative frequency of price and volume-related NTBs under various product categories is provided by a relatively recent UNCTAD study; as might be expected, it points out the overriding significance of agricultural and textile protectionism. Cf. UNCTAD: Protection, Trade Relations and Structural Adjustment. Report by the UNCTAD Secretariat (TD/274), January 7, 1983, p. 17.

⁴ Cf. UN, World Economic Survey 1983, New York 1983, p. 31.

⁵ For a general overview, see J. de Miramon: Countertrade: A Modernized Barter System, in: OECD Observer, No. 114/1982, p. 12 ff.; J. I. Walsh: Countertrade: Not just for East-West any more, in: Journal of World Trade Law, Vol. 17 (1983), p. 3 ff.; G. Banks: The Economics and Politics of Countertrade, in: The World Economy, Vol. 6 (1983), p. 159 ff.; I. Outters-Jaeger: The Development Impact of Barter in Developing Countries, OECD, Paris 1979.

⁶ For details, see W. Lütkenhorst: Trade Policy Approaches of Pacific Basin Developing Countries, (Institut für Entwicklungsforschung und Entwicklungspolitik, Materialien und kleine Schriften, No. 96) Bochum 1984, p. 22 ff.

⁷ Cf. the remarks made by the Malaysian Premier Mahathir, in: Far Eastern Economic Review, March 17, 1983, p. 8.

⁸ Cf. also L. Dunn et al.: In the Kingdom of the Blind. A Report on Protectionism in the Asian-Pacific Region, London 1983, p. 69.

The rule of reciprocity, not actually codified within GATT, has hitherto been mainly used in connection with the rounds of multilateral trade negotiation; it was to ensure that tariff reductions conceded by the contracting parties were perceived as being balanced. Reciprocity, in this sense, refers to the *overall effect* of the *reduction* in tariff protection. By thus combining the idea of *unconditional* adherence to the MFN principle on the one hand with that of maintaining *overall* reciprocity on the other, GATT managed in a rather novel way to simultaneously uphold two essentially incompatible fundamental principles.⁹ Although it was recognised, then, that tariff reductions represented concessions to trading partners for which equivalent concessions might be sought in a process of negotiation, any renewed propagation of a narrow, bilaterally orientated interpretation of reciprocity was successfully prevented.

During 1982 and 1983, however, the Reagan Administration in the USA supported a series of Bills still under dispute in Congress which give fresh impetus to precisely such a bilateral interpretation of reciprocity. The proposals envisage raising US exports "through the achievement of commercial opportunities in foreign markets *substantially equivalent* to those awarded by the United States."¹⁰

One of the main roots of this new bilateralism has been the perception widely shared among politicians that the large US trade deficit with Japan can be attributed to differences in protection levels between the two countries which now ought to be balanced out. Reciprocity has thus been redefined into a demand that the *level* of protection, within individual sectors, should be *equalised* between the USA and its trading partners.¹¹ If this concept were to be passed into law and become regular practice in trade policy, it would bring with it an especially severe violation of the unconditional MFN-treatment. Instead of being an instrument of liberalisation, reciprocity would again become what it was in the 1930s, namely the basis for the *unilateral* declaration of trade policy measures which abandon the principle of multilateral decision-

making and remain in the bilateral camp, thus creating a large potential for retaliatory measures.

Quite regardless of whether or not such tendencies will become stronger in the future, anyone making a realistic examination of GATT is bound to conclude that the hallowed pillars of the agreement are not just showing shallow signs of rust, but may already have lost the capacity to hold together the whole GATT-system: "To sanction long-term quotas, as for example via a series of textile agreements, without proof of serious injury and in the absence of some agreed-upon definition of a disrupted market amounts to a major revision of the trading framework in a protectionist direction. The GATT has now accepted, in effect, the freedom of the importing countries to impose quantitative restrictions whenever important domestic industries deem it in their interest to prevent 'too much' import penetration into their own markets."¹² There is no longer any such thing as a commonly binding international trade policy nor, more importantly, can it be restored retrogressively: "A return to the classical order of international trade . . . as still embodied in GATT, appears to be out of the question in a world in which national states cannot be compelled to waive their right to an autonomous growth and employment policy."¹³

Dominance of National Interests

Before going into the reasons for the gradual self-destruction of GATT in more detail, the general observation must be made that it is not so much the major trading countries' *attitude* towards a liberal system of trade which has changed; rather, the main change has been in the *overall conditions* set by the world economy, and hence in the relative distribution of the advantages gained from international trade. Generally speaking, a liberal order of world trade remained in force for as long as, and to the extent that, the powerful nations could profit from it. In those sectors where disadvantages were perceived from a liberal trading system, protectionist exceptions were quickly made: it only took until the beginning of the 1950s before a cry went up from the one-time bastion of free trade, the USA, for a GATT waiver for agricultural trade, and this was duly granted in 1955, delivering a severe blow both to the USA's credibility in trade policy terms and to GATT's overall standing in the eyes of many countries.¹⁴ Textile protectionism first began to take root almost as early. 1957 was the first year in which Japan

⁹ Cf. UNCTAD, op. cit., p. 31, and also the remarks made by the Director General of GATT, Arthur Dunkel: "In the 1920s, the words 'reciprocity' and 'non-discrimination' . . . denoted contradictions. . . . The fact that in the GATT countries have been negotiating and contracting with each other on the basis of reciprocity and non-discrimination is due to their understanding that reciprocity is always a subjective notion which cannot be looked at in bilateral terms." (GATT Press Release, No. 1312, March 5, 1982).

¹⁰ Reciprocal Trade and Investment Act (Draft), quoted from P. Dymock, D. V o g t: Protectionist Pressures in the U.S. Congress, in: Journal of World Trade Law, Vol. 17 (1983), p. 507 (emphasis added).

¹¹ Cf. W. R. C l i n e: "Reciprocity": A New Approach to World Trade Policy?, Washington 1982, p. 7 ff.

¹² H. Kitamura: International Division of Labor and Industrial Adjustment: Relevance of Theory to Policy Analysis, in: The Developing Economies, Vol. 18 (1980), p. 384.

¹³ H. Körner: The New Protectionism and the Third World, in: INTERECONOMICS, Vol. 17 (1982), p. 183.

had to accept the need to exercise self-restraint in its textile exports to the USA. It was only another five years before the Long-Term Arrangement Regarding International Trade in Cotton Textiles was concluded. In 1974 it was replaced and broadened by the Multi-Fibre Arrangement, which in the meantime has been renewed twice and needs no further elaboration here.¹⁵ The orientation towards free trade has obviously always run up against its own narrow limits whenever it threatened to damage the national economic interests of the USA as the "économie dominante". As long as the USA was able to draw benefit from liberal world trade in most economic sectors and to preserve that liberal order by virtue of its overriding political influence, the constituent principles of GATT remained valid for the greater part of world trade. However, this position changed as (a) an increasing number of sectors was subjected to pressure from new competitive suppliers¹⁶ and (b) as the "Pax Americana" was gradually transformed into a polycentric system of economic and political power where other parties (not least the EC) were also able to assert their needs for protection in particular sectors.

The idea that the leading industrialised nations had given their lasting agreement to a liberal order of world trade because of some higher economic ideal was therefore never anything other than an illusion. The right assessment, in fact, is that the post-war period created atypical conditions with structural problems remaining concealed beneath high growth rates, and that under those conditions the targets of national economic policies were in harmony with a liberal foreign trade regime.¹⁷ This realistic perspective may be the only way of explaining how any sort of GATT principle could be toppled with so little inhibition the moment it threatened to collide with national targets.

Reasons for the Decline in Discipline

There are many different reasons for the rapid decline in GATT discipline and the revitalisation of mercantilist elements in policy-making, but they can be traced back to a small number of primary causes:¹⁸

¹⁴ Cf. K. W. Dam: The GATT Law and International Economic Organization, Chicago 1970, p. 270 ff.; G. Curzon: Multilateral Commercial Diplomacy, London 1965, p. 168 ff.; R. B. Reich, op. cit., p. 779 ff.

¹⁵ Cf. M. Wolf: Managed Trade in Practice: Implications of the Textile Agreements, in: W. R. Cline (ed.): Trade Policy in the 1980s, Washington 1983, p. 455 ff.

¹⁶ In the USA's case the country's growing interdependence with the world economy should be noted, which raised the proportion of imports in GNP from 3 % at the start of the 1960s to 10 % at the start of the 1980s. This was accompanied by a substantial rise in the proportion of total imports taken up by manufactures, hence the increasing influence of manufacturer lobbies. For a general account of trade policy decision-making processes in the USA, cf. H. Müller-Godffroy et al.: Der neue Protektionismus, Bonn 1983, p. 50 ff.

□ Firstly, causes must be outlined which are inherent in GATT itself. The GATT-MTN-system was regarded for too long, i.e. right up to the Tokyo Round, as a straightforward "tariff lowering device". The complex of different objectives of international trade policy was unidimensionally reduced to achieving maximum reductions in trade barriers and only insufficient attention was paid to the fact that workable mechanisms for dealing with the resultant structural changes ought to have a central significance. A symptom of this deficit is the controversy which has persisted to this day over the need to reform the safeguard clause in Art. XIX (see below) which has proved inadequate for trade policy purposes and which, above all, has brought about "mercantilist innovations at the margins of legality".¹⁹ Furthermore, it is evident that the chief protagonists in particular (USA, EC, Japan) make their adherence to GATT rules, or any resort they have to GATT in its role as arbitrator on trade policy matters, dependent on the gains they expect to make from taking such action. Unpalatable GATT decisions are widely ignored, or else solutions to conflicts are negotiated bilaterally and the remaining signatories have no choice but to add their agreement after the event.²⁰

□ There are a number of other reasons why past increases in the demand for protective measures have been so strong, apart from weaknesses in the GATT system. One of these is the general tendency of Western industrial countries to develop into societies which are fundamentally orientated towards a more or less extensive welfare state. This trend is accompanied by a strong element of corporatism, that is to say powerful interest groups have emerged which participate in the political decision-making process and which readily assert their sectoral needs for protection against the interests of the politically diffuse majority of the consumers. This has been accentuated as a certain preference for the status quo (both as far as place of residence and standard of living are concerned) has taken on a high priority in more and more sections of the population, meaning that the mobility requirements posed by rapid structural change are largely perceived as a threat.

□ The deepening of the international division of labour

¹⁷ Lorenz appropriately describes this phase as "international specialization 'without tears'". Cf. D. Lorenz: On the Crisis of the "Liberalization Policy" in the Economics of Interdependence, in: INTERECONOMICS, Vol. 13 (1978), p. 169.

¹⁸ On the following points, cf. chiefly D. Lorenz: Ursachen und Konsequenzen des Neomerkantilismus, in: A. Woll (ed.): Internationale Anpassungsprozesse, Berlin 1981, p. 16 ff.

¹⁹ D. Lorenz, Ursachen und Konsequenzen, op. cit., p. 17.

²⁰ Cf. H. B. Malmgren: Threats to the Multilateral System, in: W. R. Cline, Trade Policy, op. cit., p. 196 ff.

has become all the more explosive a topic now that comparative cost advantages – in an age where high technology goods are traded on an intra-industry basis – have finally lost their “political innocence”. The sectors of trade between industrial nations and NICs which are now gaining significance are determined neither by availability of natural resources (Ricardo-goods) nor by relative factor endowments (Heckscher-Ohlin-goods). Cline very appropriately gave this sphere the label of “arbitrary comparative advantage”.²¹ What he means is that the patterns of specialisation emerging in particular areas of production are not determined *ex ante* by economic structural parameters, but are a quite conclusive result of political intervention: “In a very real and immediate way, a nation *chooses* its comparative advantage.”²² This not only applies in the stricter sense that quite specific lines of technological development are given priority and are deliberately promoted (subsidised). It also applies in the broader sense that, in view of the increasing significance of human capital as a factor of production, a country’s educational system and entire social infrastructure determine its overall competitiveness more strongly than ever before. This is a situation where the opportunity costs of refraining from political action are ever greater; a premium is placed on the earliest possible promotion of *potentially* competitive technologies and products. Considering that governments have a *de facto* responsibility for growth and employment (which one may or may not believe is a good thing), a new type of international competition has emerged which could lead during the 1980s to a subsidy war no less dangerous than the devaluation and protection war of the 1930s. Hager deserves complete agreement when he says that “in a world where *all* governments accelerate or retard adjustment in pursuit of national targets, the market as a coordination mechanism cannot function.”²³ If this problem will not shortly be brought under control (especially as far as production and export subsidies are concerned), then he may also be proved right in his thesis that “managed trade is . . . a logical necessity for achieving balance between managed domestic factor and goods markets.”²⁴

□ Although the latter point refers mainly, if not exclusively to trade between industrial nations, it has also been evident for some time that the economic rise of the newly industrialising countries has been one of

the chief causes of neo-mercantilist trade policy. Of course no one can deny that successful export diversification, especially in the East and South-East Asian NICs, is putting the industrial nations under severe pressure of structural adjustment. Nevertheless a marked overemphasis of this phenomenon in political discussion is in evidence: While structural change fuelled by *domestic* factors (changing consumer preferences; divergent rates of productivity growth from sector to sector) is largely accepted, there is a contrasting tendency to block out structural change *induced by external trade*, which obviously is not granted the same legitimacy. Third World exporters of competitive manufactures have normally found themselves in a particularly unfavourable position. This is partly due to economically rational reasons as the division of labour between industrial and developing countries (including the NICs) continues to be *inter-industrial* in nature much more than *intra-industrial*. This makes structural adjustment a particularly difficult task. The problem is added to, however, by the NICs’ limited bargaining power in the international system, which makes the political cost of unilaterally declared defensive measures appear very low for the industrial nations. These two factors taken together explain the highly selective nature of protective measures taken against those countries with the least potential for retaliatory action: in the three years from 1975 to 1977 alone, Taiwan and South Korea saw respectively 26 and 52 new discriminatory measures brought into force against them by various industrial nations.²⁵ Bilateralism is hence no longer a mere danger, it has once again become a reality and is mainly being used to bar market entry to those countries which might be successful in carrying out their belated industrialisation.

To my knowledge the only authors who have managed to see positive features in this bilateralism are Yoffie and Keohane. They believe there are advantages to be had for the NICs in that (a) the short-term, uncoordinated and *ad hoc* measures being taken by the industrial nations are ultimately likely to be less restrictive in total than measures conceived in the multilateral framework might be, and (b) bilateral measures could at least open up small negotiating opportunities for the NICs affected: “The ADCs (advanced developing countries; W.L.) have an interest in keeping trade low-key, minimising the significance of any particular agreement, maintaining flexibility and trying to keep the United States Government (and other governments; W.L.) from adopting a coherent and

²¹ Cf. W. R. Cline, “Reciprocity”, *op. cit.*, p. 38 ff.

²² R. B. Reich, *op. cit.*, p. 782.

²³ W. Hager: Free Trade means Destabilization, in: *INTERECONOMICS*, Vol. 19 (1984), p. 30.

²⁴ *Ibid.*

²⁵ B. Nowzad: The Rise in Protectionism, IMF Pamphlet Series No. 24, Washington 1978, p. 108 ff.

comprehensive long-term trade policy."²⁶ However, this is an extremely risky line of argument, not least because it neglects the immense significance of *long-term stability* in the trade policy setting if export production is to be efficiently built up.

Differing Recommendations

Although the *diagnosis* offered at present is unanimous, namely that GATT has to a great extent lost its normative power as a regulatory mechanism and that "general trade policy . . . has virtually ceased to exist"²⁷, a reliable *prognosis* as to the future direction of international trade policy can hardly be given. It is not only that Friedrich List's statement still holds that "in no other branch of political economy . . . there is such a divergence of opinion between theoretists and practitioners as in matters of *international trade* and of *trade policy*."²⁸ Even worse, it has to be admitted that – and how could one expect it to be otherwise? – even *within* the realm of academic discussion the most varied recommendations are made:

□ At one end of the spectrum of opinion we find appeals to governments – obviously apolitical in nature

²⁶ D. B. Yoffie, R. O. Keohane: Responding to the "New Protectionism": Strategies for the Advanced Developing Countries in the Pacific Basin, in: W. Hong, L. B. Krause (eds.): Trade and Growth of the Advanced Developing Countries in the Pacific Basin, Seoul 1981, p. 583 ff.

²⁷ J. Tumler: International Economic Order – Can the Trend be Reversed?, in: The World Economy, Vol. 5 (1982), p. 30.

– to finally renounce protectionism, depoliticise the world economy and allow it to be governed by market forces. The view is taken that the problem of finding acceptance for this approach can readily be solved simply by making the public aware of the high macroeconomic costs of protectionism.²⁹

□ At the other end of the spectrum of opinion there is dangerous talk of a comprehensive European protectionism.³⁰ This approach's most unequivocal proponent, Hager, quite rightly draws attention to the fundamental significance of the threat to the "old" industrial nations coming from the Pacific region (both Japan and the NICs).³¹ Because he believes, though, that for the countries of Europe to actually withstand such competition they would have to pay the price of abandoning their whole present social organisation, he advocates a comprehensive system of quotas, minimum prices and market share regulation for

²⁸ F. List: Das nationale System der politischen Ökonomie, Basle, Tübingen 1959 (first published in 1841), p. 30.

²⁹ Cf. for example: Global Strategy for Growth. A Report on North-South Issues by a Study Group under the Chairmanship of Lord McFadzean of Kelvinside, London 1981, p. 78 ff.

³⁰ Cf. W. Hager, op. cit.; W. Hager: Protectionism and Autonomy: How to Preserve Free Trade in Europe, in: International Affairs, Vol. 58 (1981/82), p. 413 ff.

³¹ For a comprehensive account, cf. W. Kraus: Pazifische Zusammenarbeit und Europäische Gemeinschaft, in: Außenpolitik, April 1984; E. Rhein: Die pazifische Herausforderung: Gefahren und Chancen für Europa, in: Europa-Archiv, Vol. 39 (1984), p. 101 ff.

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Robert V. Roosa/Michiya Matsukawa/Armin Gutowski

OST-WEST-HANDEL AM SCHEIDEWEG

- Ein Bericht an die Trilaterale Kommission -

(East-West Trade at a Crossroads
A Report to the Trilateral Commission)

Current political events have repeatedly caused the Western countries to put economic pressure on the East. A common strategy is lacking, however. The result is impulsive, uncoordinated – and therefore ineffective – measures which in some cases hit the economies of the imposing countries harder than those of the other side. Three well-known economic experts from Germany, the USA and Japan outline a trade and finance policy which is compatible with every Western political-strategic doctrine. (In German.)

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substitutive imports of manufactured products. According to this approach such measures would be the only way of at least upholding liberal foreign trade *within* Western Europe. Evidently what has happened here is that the senescent-industry argument has grown straight into a senescent-country argument, demanding that the whole of Western Europe withdraw from international competition and the division of labour.

□ Neither of the approaches outlined above proves particularly helpful towards the central task of trade policy in the 1980s, namely that of reforming the GATT rules in such a way as to ensure they will find a stronger political acceptance amongst the agreement's contracting parties: "The issue is . . . whether we will have a GATT which applies to world trade versus one that increasingly does not . . . by our insisting that the GATT must remain pure, and therefore, irrelevant."³²

Out of the numerous controversial questions surrounding the reform of GATT, the concluding parts of this article will therefore address three quite fundamental problem areas which, in particular, bear upon the relationship between industrial and developing countries within the framework of GATT.

Reform of Safeguard Clause in Art. XIX

Discussion of the safeguard clause as expressed in Art. XIX of GATT has by now been under way for more than a decade. In theoretical terms the discussion of alternatives has long since reached the point of exhaustion, but a political compromise has yet to be achieved. The issue of the safeguard clause was the most important item of "unfinished business" left over after the Tokyo Round, and the GATT ministerial conference in November 1982 also failed to reach a common position on it. What, then, lies at the heart of this problem?³³ The fact that Art. XIX can only be invoked within the framework of the *most-favoured-nation principle* (in other words, against all the exporters of the good in question), and that the exporters are then allowed either to require *compensation* or to take

retaliatory measures, has meant that relatively little use has been made of the safeguard clause. Instead, countries have increasingly resorted to selective protective measures (VERs; OMAs) outside the control of GATT: of the total of 114 protective measures taken since 1978 only 30 fell under the terms of Art. XIX, the corollary being that all the others ignored the provisions of GATT.³⁴

Only a small number of purists still maintain that Art. XIX should be preserved unaltered³⁵ – virtually in the sense of a moral finger pointing out the compulsory, iron-clad principles of GATT – while all others agree that it is in need of reform. One point that is accepted without question is that one should aim to make all protective measures notifiable as a general rule, bringing them back from the grey area of trade policy and raising the political costs of selective protection by making it more internationally visible. A question that continues to be controversial, however, is whether Art. XIX should itself actually permit selective protective measures, thereby abandoning the most-favoured-nation principle; this is what the EC countries have demanded, and the developing countries in particular have rejected.³⁶ The proposals made in this direction have varied in scope, as they have linked a selective safeguard clause to different restrictive conditions. The particular restrictions suggested, which are not mutually exclusive, are as follows:

- the approval of the exporting country affected, or "consensual selectivity", which is tantamount to a simple legalisation of VERs and OMAs,
- strict international monitoring of safeguard measures coupled with firm limits on their period of effectiveness,
- compliance with objective criteria relating to the extent and the unpredictability of material injury, and to how far particular countries may be identified as being clearly responsible for that injury,
- simultaneous presentation of an adjustment plan (trade adjustment policy) to cut back productive capacity which is no longer competitive.³⁷

Furthermore, irrespective of the selectivity or non-selectivity of Art. XIX, it has been suggested that the right to take retaliatory measures (or the right to receive

³² A. W. Wolff: Need for new GATT Rules to Govern Safeguard Actions, in: W. R. Cline, Trade Policy, op. cit., p. 391.

³³ On detailed aspects, cf. the precise and comprehensive account in Wolff, op. cit.

³⁴ Cf. UN, op. cit., p. 62, footnote 1; also, for a detailed account, S. J. Anjaria et al.: Developments in International Trade Policy, IMF Occasional Paper No. 16, Second Printing, July 1983, p. 122.

³⁵ L. Dunn et al., op. cit., p. 120, voice their opposition to "writing a rule in violation of a basic principle".

³⁶ The controversy can actually be traced back to the mid-1950s when an ad hoc committee on the problem of the safeguard clause was formed in connection with Japan's accession to GATT. On this point, and on the overall history of Art. XIX, cf. R. Quick: Exportselbstbeschränkungen und Art. XIX GATT, Cologne etc. 1983, p. 95 ff.

³⁷ It must be noted with regret at this point that the discussion which went on intensively for a long period over the need for trade adjustment policy (cf. K. Glaubitt, W. Lütkenhorst: Elemente einer neuen Weltwirtschaftsordnung, Tübingen, Basle 1979, p. 125 ff.) has in the meantime come to a halt. Evidently the underlying political dilemma is that the necessity for an anticipatory structural policy related to foreign trade is not realised during the periods of satisfactory growth, whilst the deliberate contraction of individual sectors appears to be unenforceable during periods of general economic weakness.

Table 1
Tokyo Round Agreements: Status of Acceptance by Developing Countries¹

(as of December 2, 1983)

	Technical Barriers	Government Procurement	Subsidies Count. Duties	Bovine Meat	Dairy	Customs Valuation	Import Licensing	Civil Aircraft	Anti Dumping
Argentina	S	O	O	A	A	S*	S	O	O
Brazil	A	O	A	A	O	A*	O	O	A
Chile	A	O	A	—	O	O	A	—	O
Egypt	A	O	A	A	S	O	A	S	A
India	A	O	A	O	O	A*	A	O	A
Korea	A	O	A	—	—	A*	O	—	A
Malawi	—	—	—	O	—	A*	—	—	—
Pakistan	A	—	A	—	—	O	A	—	A
Philippines	A	O	O	—	—	O	A*	—	O
Rwanda	S	—	—	—	—	—	—	—	—
Singapore	A	A	O	—	—	O	O	O	O
Uruguay	—	—	A	A	A	—	—	—	O

A = Accepted; S = Signed (acceptance pending); O = Observer; * = Reservation, condition and/or declaration.

¹ Includes only those developing countries which accepted or signed at least one of the Agreements.

Source: Compiled from GATT – Document L/5517/Add. 5, December 5, 1983.

compensation) be suspended for a certain period provided the country invoking the safeguard clause does not delay the necessary adjustment process.³⁸

The central problem with all these reform proposals lies, of course, with their political trustworthiness, i.e. one may ask whether the NICs, which are those most affected, “have good grounds for trusting the established industrialized countries to adhere faithfully to whatever criteria were agreed for selective action.”³⁹ However, it must be realised on the other hand that even if the new rules were to be violated again (as can be expected) this could certainly be no worse than the status quo where successful exporters are discriminated against with total lack of control in a way which is illegal under GATT. Looked at in this way, some pragmatic reform of Art. XIX would at least offer an opportunity, at no extra risk, to restore a little strength to GATT’s dwindled authority. Protectionism, after all, will never be completely eliminated, and is a force which can at best be channelled.

Graduation of Developing Countries

Whilst it is the industrial nations which stand accused in the discussion over the safeguard clause, there is no denying that tariff levels are very high in most developing countries and that extensive use is made of NTBs. During the Tokyo Round this meant that the

industrial countries were able, in effect, to turn the tables by putting the developing countries’ graduation in trade-policy terms on the agenda (i.e. it was proposed that the more advanced LDCs be required to “graduate” to the commitments made by other GATT signatories thus losing preferential treatment).⁴⁰ It was the developing countries which had first been successful in pressing home their demand for the preferential treatment they receive to at least be legally recognised; previously, as in the case of the General System of Preferences, such treatment had only been provided according to a GATT-waiver. The price they had to pay for this success, it seems, was that the principle of graduation was incorporated into the so-called enabling clause⁴¹: “Less-developed contracting parties expect that their capacity to make contributions or make negotiated concessions . . . would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.”

How should this demand be assessed? The first point to note is that because (a) the GATT rules are not *uniform* but *universal* in nature,⁴² i.e. because they differ

⁴⁰ For an overall view, cf. I. Frank: The “Graduation” Issue for LDCs, in: *Journal of World Trade Law*, Vol. 13 (1979), p. 289 ff.; K. A. Koekkoek: On the Case for Graduation, in: *INTERECONOMICS*, Vol. 18 (1983), p. 225 ff.

⁴¹ The exact title reads: Agreement on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

⁴² On this distinction, cf. P. P. Streeten: What New International Economic Order?, in: U. E. Simonis (ed.): *Ordnungspolitische Fragen zum Nord-Süd-Konflikt*, Berlin 1983, p. 86 ff.

³⁸ Cf. E. Minx: *Von der Liberalisierungs- zur Wettbewerbspolitik*, Berlin, New York 1980, p. 205. This proposal is fundamentally convincing, but putting it into operation could be expected to raise problems which would be difficult to overcome.

³⁹ H. Corbet: Importance of Being Earnest about Further GATT Negotiations, in: *The World Economy*, Vol. 2 (1979), p. 330.

in substance according to different categories of countries (DCs - LDCs) and (b) classification in one of these categories is subject to modifications, with transitions occurring as a result of development processes (e.g. Japan), the principle of graduation becomes a logical necessity. Certainly it is inconceivable that a country such as South Korea, if it acceded to OECD membership at the end of the 1980s, could retain any preferential status within GATT.⁴³ However, there is still a total lack of any operational criteria for identifying justified claims that a fully responsible role should be adopted. The development of suitable criteria as result of a *consensus* of the GATT signatories could well prove to be one of the most important tasks in future negotiations. Otherwise there is a great danger that a number of developing countries will be "graduated" by industrial countries taking unilateral action. It already appears, for instance, that new legislation from the US Congress to allow the extension of the country's GSP which expires shortly is being tied to conditions with regard to the dismantling of trade barriers in developing countries (reciprocity). In this respect one has to agree with Diaz-Alejandro who describes the graduation principle as an "extravagant demand"⁴⁴ as long as the primary concern of industrial nations is to distract attention from their own trade policy shortcomings.

Conditional Most-Favoured-Nation Clause

It has already been pointed out at the beginning of this article that there is a *de facto* undermining of the most-favoured-nation principle in the real world of international trade. Since the Tokyo Round, though, there is now also an ongoing "official" discussion concerning the transition from unconditional to *conditional* MFN-treatment. As is well-known a number of detailed trade policy codes were enacted in the course of the Tokyo Round⁴⁵ which in the main were only signed by the industrial countries and by a very small number of more advanced developing countries (for details, see Table 1). However, the rights and duties flowing from these codes apply only to those countries which have actually accepted them, with the result that a complex net of *conditional* most-favoured-nation

clauses has now emerged which are valid for a different group of countries in each case.

Given that the legal controversy over the new codes' compatibility with Art. I of GATT is still running, cases of dispute are likely to arise in ever greater numbers. As soon as 1981 a quarrel blew up between the USA and India over the material injury test within the framework of the Code on Subsidies and Countervailing Duties.⁴⁶ A complicating aspect in these cases is that some of the codes include individual dispute settlement procedures, and how these relate to GATT's overall dispute settlement procedure is as yet unclarified. The general problem of a conditional MFN clause obviously goes even deeper than this: there is a danger that, just at a time when many developing countries have become increasingly significant for their part in world trade, making it necessary that the resulting problems should be solved within GATT, precisely these countries might be excluded from the continuing development of GATT's principles. Seen against this background, it may not be surprising that it was the *developing* countries who, during the Tokyo Round, pleaded for the "unity and integrity of the GATT system".⁴⁷

Concluding Remarks

GATT's member countries face fundamental and serious decisions in the problem areas of the safeguard clause, the principle of graduation and the conditional most-favoured-nation clause; if a new round of multilateral trade negotiation takes place as expected, these problems offer any amount of, frequently explosive, material. One would hope that the parties arrive at workable solutions to these matters of general significance *before* totally new aspects (e.g. the broadening of GATT to include trade in services) cause a distraction. For the chief threat to GATT's future role is not to be found in the modification of its original principles (which in fact now only exist as ruins), but in

⁴³ Even now the average tariff level of 38 % (1978) and a share of export subsidies in total export value amounting to 22 % (1978) represent an explosive issue in trade policy. Cf. W. Lütkenhorst, *op. cit.*, p. 10 and p. 30 ff.

⁴⁴ C. F. Diaz-Alejandro: Comment, in: W. R. Cline, *Trade Policy*, *op. cit.*, p. 305; cf. also the critique in UNCTAD, *op. cit.*, p. 32 ff.

⁴⁵ On the detailed contents of the codes, cf. B. Balassa: *The Tokyo Round and the Developing Countries*, in: *Journal of World Trade Law*, Vol. 14 (1980), p. 102 ff.

⁴⁶ For a more precise treatment, cf. J. H. Jackson: *GATT Machinery and the Tokyo Round Agreements*, in: W. R. Cline, *Trade Policy*, *op. cit.*, p. 174 f.; W. R. Cline, "Reciprocity", *op. cit.*, p. 19 f.

⁴⁷ R. Krishnamurti: *Multilateral Trade Negotiations and the Developing Countries*, in: *Third World Quarterly*, Vol. 2 (1980), p. 263.

⁴⁸ Cf. L. Dunn et al., *op. cit.*, p. 116 ff. On this issue Lorenz points out the circular argument involved when renewed liberalisation is expected to solve the problems which were caused to a substantial degree by earlier rounds of liberalisation. Cf. D. Lorenz: *International Division of Labour versus Closer Cooperation? With Special Regard to ASEAN-EEC Economic Relations*, (paper presented at the Third Conference on ASEAN-EEC Economic Relations, October 26-28, 1983, Bangkok), Revised Version, January 1984, p. 33 f.

⁴⁹ Cf. *ibid*

⁵⁰ Cf. W. Lütkenhorst: *Pacific Basin Interdependencies - A Case for Large-Scale Economic Cooperation?*, in: *INTERECONOMICS*, Vol. 18 (1983), p. 28 ff.

the vanishing readiness of many member countries to accept compromises, i.e. a vanishing willingness to come to a general consensus in complex negotiations.

The expectation that the multilateral system of GATT will not be able to solve the problems it now faces in due course is no doubt one of the factors contributing to the current prominence of regionally orientated policy approaches including such differing concepts as:

- the recommendation that the countries of the Asia-Pacific region should take the initiative in a return to liberal world trade,⁴⁸
- the plea for greater inter-regional policy coordination as a means of overcoming foreign trade conflicts *ex ante*,⁴⁹

□ efforts to give institutional reinforcement to existing areas of interdependence, as have been intensively discussed for some time with regard to the Pacific Basin.⁵⁰

Of course anyone who has studied the matter will be aware that regional policy coordination is treading a hard and rocky road, at the end of which there have so far all too seldom been any convincing results. This is hardly a problem which applies only to developing countries: witness the EC's most recent summit failures. On the other hand, a realistic point of view requires that the imperfect results of regional policy coordination should not be measured against a theory-derived *ideal* of multilateral liberalism, but against the *reality* of increasing bilateralism.

GATT

Dumping and Anti-Dumping Measures

by Richard Senti, Zurich*

In recent times, the number of dumping actions has shown a striking correlation with the respective level of economic activity.¹ The following observations convey an overall picture of the dumping actions currently pending and the anti-dumping measures implemented, and look into the current problems faced by the international anti-dumping system.

For years, dumping actions have been at the centre of discussions in the trade negotiations between the US, Canada, Japan and the member countries of the EC. At the end of 1977, there were twenty dumping actions in progress in the USA. Tension eased in 1978 following the introduction of the trigger price system to regulate steel imports.²

On confirmation of the modified cost criterion in the US Trade Act of 1979, the US steel firms once again took action against the EC steel producers. In 1980, the trigger price system briefly became temporarily inoperative but was applied again the same year with added force. Nevertheless, more dumping actions followed, particularly in the years 1981 and 1982.³

At the beginning of 1983, the GATT Committee on Anti-Dumping Questions published a summary of the anti-dumping proceedings instituted during recent years

in the USA, EC, Finland, Canada, Austria and Sweden, the provisional and definitive counter-measures and the price agreements reached (cf. Table 1).

The majority of actions are directed at the industrialised nations and only a few against the developing countries. Neither withdrawn actions nor those which resulted in a negative decision are included in these figures.

Table 2 shows between which trade partners dumping negotiations took place during the years 1981/

¹ Cf. S. P. Magee: Protectionism in the United States, University of Texas at Austin 1982 (mimeo), quoted from B. S. Frey: The public choice view of international political economy, in: International Organization 38 (1984) 1, p. 211.

² Trigger prices are fixed by the US Administration every quarter. If importers undercut these minimum prices, this automatically triggers a dumping investigation.

³ At the beginning of 1982 in the USA, there were in total 93 actions being brought by American steel firms for allegedly dumped or subsidised steel imports. Cf. US Mission Geneva, Daily Bulletin No. 33 of 19. 2. 1982, p. 1.

* Center for Economic Research, Swiss Federal Institute of Technology Zurich.