

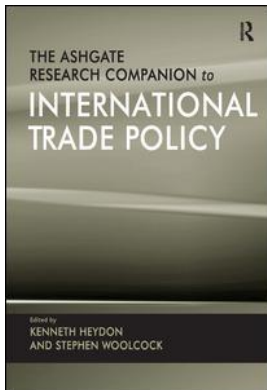
This article was downloaded by: 10.2.97.136

On: 22 Mar 2023

Access details: *subscription number*

Publisher: *Routledge*

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The Ashgate Research Companion To International Trade Policy

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Publication details

<https://test.routledgehandbooks.com/doi/10.4324/9781315613086.ch3>

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Published online on: 19 Jul 2012

How to cite :- Stephen Woolcock. 19 Jul 2012, *The Evolution of the International Trading System from: The Ashgate Research Companion To International Trade Policy* Routledge

Accessed on: 22 Mar 2023

<https://test.routledgehandbooks.com/doi/10.4324/9781315613086.ch3>

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The Evolution of the International Trading System

Stephen Woolcock

Introduction

Among the various issues in the current debate on the future of the international trading system, three stand out: can the World Trade Organization (WTO) function in a progressively more multi-polar trading system; has the WTO reached the limits of what it can sensibly cover; and is the multilateral system being undermined by the rise of – predominantly bilateral – preferential trade and investment agreements?¹ Various chapters in this volume address these issues, but in seeking an understanding of such current trends it helps to know how the system has evolved. This chapter therefore considers the period from the establishment of the General Agreement on Tariffs and Trade (GATT) in 1947 to the Doha Development Agenda (DDA) negotiations of the WTO. It shows how the trading system has evolved from a US-led system, through one shaped by a club of developed Organization for Economic Cooperation and Development (OECD) countries, to one with a much more heterogeneous power structure. In other words, the trading system has had to accommodate shifts in relative economic power before. The scope of agreements has also expanded, largely in line with the contemporary preferences of major players concerning what constituted trade issues rather than any objective criteria. Trade policy, like other fields, has also been shaped by precedent or path dependency. The positions of countries and interest groups today have evolved from those ten or 30 years ago, but trade preferences may be the result of capture and often change slowly, so that the past can form the basis of current preferences. Finally, the chapter shows that ‘multilateralism’ needs some qualification. What existed before the rise of bilateralism after the mid-1990s, was based on multilateral

¹ For a discussion of the challenges facing the WTO and various proposals for how it should be reformed see Sutherland Report (2007), Warwick Commission (2007) and Jones (2010).

principles, but shaped by a more complex combination of plurilateral, regional and bilateral influences on negotiations.²

The Founding of the Post-1947 International Trading System

The post-war trading system was shaped by the experience of protection, economic nationalism and trade discrimination in the 1920s and 1930s that contributed to the collapse of the international economy and the political conflict of the interwar period. The United States emerged from the Second World War as the dominant economic power and it was the United States that provided leadership in the establishment of the GATT. This policy was based on the US domestic consensus and on the position of the US Congress, which favoured reciprocal trade liberalization. This principle was codified in the 1933 US Reciprocal Trade Agreements Act, which reversed the protectionist Smoot–Hawley Tariff of 1930. The US-led system therefore differed from the unilateral trade policy pursued by Britain before 1914.

The original intention had been to establish an International Trade Organization (ITO) alongside the Bretton Woods institutions of the International Monetary Fund (IMF) and the World Bank (IBRD). Indeed, negotiations on trade began before those on international monetary relations, but broke down because of an American determination to put an end to preferential trade agreements (PTAs) and the British reluctance to dismantle the Imperial Preferences established at the Ottawa Conference of 1933. The Havana Charter was negotiated in 1948, but was never presented to the US Congress for ratification. The demise of the ITO has been explained by opposition from protectionists, who saw the liberal intent as a threat, and perfectionists who saw too much scope for government intervention (Diebold 1952). Foreign policy also played a role in the sense that the Truman Administration preferred, at the onset of the Cold War, to expend its political capital getting legislation on the Marshall Plan and NATO through the Congress rather than the ITO. The GATT, which had been negotiated in 1947 as part of the ITO process, also offered much of what the United States wanted and a contractual agreement between states required no congressional approval.

The GATT, as the name implies, was an agreement rather than an international organization, and a negotiating forum in which initiatives for new trade liberalization or rulemaking came from the Contracting Parties (CPs) and not from the staff of a large secretariat. In actual fact, staff and the offices of the old League of Nations were initially used as the secretariat. The GATT consisted of a framework of basic principles and rules as well as a series of tariff reductions; the first of a series of multilateral tariff reductions that were to follow in the next 70 years.

² For general readings covering the evolution of and current status of the world trading system see Jackson (2000), Trebilcock and Howse (1995) and Hoekman and Kostecki (2001).

Principles of the GATT

The GATT 1947 was based on non-discrimination in international trade. The codification of this took two forms, the most favoured nation (MFN) principle (Article I, GATT) and national treatment (NT) (Article III, GATT). The MFN provision obliged all CPs not to discriminate between countries. Any favourable treatment, such as a reduced tariff, provided to another – most favoured – nation had to be extended to all CPs. National treatment required that all products imported into a customs territory be treated the same as nationally made like products. MFN therefore allowed for no PTAs and thus discrimination. National treatment precluded discrimination against foreign products, but left national governments scope to regulate (Jackson 2000).

The GATT 1947 was also based on some de facto norms, notably reciprocity and flexibility. The understanding was that tariff liberalization would be achieved through mutual tariff concessions that ensured ‘global’ or across-the-board reciprocity. Global reciprocity meant a broad balance of benefits for CPs and differed from the more protectionist idea of reciprocity within narrow sectors. Tariff negotiations were conducted bilaterally between an importer and the ‘principal suppliers’ of a product, but then multilateralized through the MFN obligation. Provided there was global reciprocity, CPs could therefore decide how fast they wished to liberalize. Multilateral rounds of negotiations offered a means of ensuring ‘concessions’ in areas of ‘defensive’ interests could be traded against lower tariffs in sectors of ‘offensive’ interests.

The GATT 1947 was flexible in that it did not require national governments to deregulate or adopt any specific standards, but merely not to use regulation to discriminate or as a disguised form of protection. There was also flexibility in that governments could decide how they wished to liberalize, but free riding aside, limited concessions meant limited satisfaction of offensive interests. The GATT also provided – and continues to provide – flexibility in the form of various exceptions to the rules. Article VI (GATT 1947) provides for the application of antidumping duties on imports that cause or threaten ‘injury’ to a national industry and are sold, ‘unfairly’ or at a price below the cost of production (see Chapter 6). Relatively loose wording in the GATT rules and the fact that such duties could be applied selectively against certain exports meant that this provision found, and continues to find, wide application as a means of easing import competition. Article XVIII allows restrictions on imports when a CP is suffering balance of payments (BoP) difficulties. This provision found application among developing countries in particular and was, for example, used by India on a regular basis well into the 1990s. Article XIX provides for non-selective safeguard measures, for example tariffs or quotas, when there is substantial injury to an industry due to an unforeseen surge in imports. A country applying safeguards is, however, required to compensate the exporting countries affected by reducing tariffs on other products.

Article XX provides a general exemption from GATT rules for measures taken to protect human, animal and plant life. Such measures have to be proportionate. This article found use during the 1980s with increased awareness of environmental

concerns (see Chapter 13). Finally, Article XXIV offers an exemption from MFN for customs unions and free trade areas. The motives behind the inclusion of Article XXIV in 1947 are not fully clear, but it was not drafted with major preferential agreements like the European Union in mind and was probably intended to provide for smaller customs unions that existed when the GATT 1947 was drafted. Subsequently Article XXIV has found very wide application as a legal basis for free trade agreements (FTAs) (see Chapter 22). Rather than a charter for free trade, the GATT could therefore be best described as a system of managed trade liberalization.

The Kennedy Round 1963–7: The First Major Multilateral

Following the original tariff reductions of 1947 further but limited liberalization was agreed in a number of early multilateral trade rounds between 1949 and 1961. These rounds brought in the Federal Republic of Germany in 1950 and Japan in 1955. In early November 1961 the United States proposed a new comprehensive round of trade negotiations that was to become the Kennedy Round. The principal US motivation was to limit the effects of the common external tariff (CET) of the European Economic Community (EEC) and to establish GATT discipline over the EEC's Common Agricultural Policy (CAP). The CET replaced the bound MFN tariffs of the individual EEC members so the US wanted to ensure the CET bindings were as low or lower than the bound tariffs of the individual EEC member states it replaced in order to minimize trade diversion.³ There was no discipline of agricultural trade following the 1953 waiver of GATT rules for US agricultural support programmes. The CAP was based on a price support scheme which implied export subsidies to dispose of any surpluses when world prices were lower than the prices guaranteed under the CAP. Such subsidies were seen as 'unfair' competition for US agricultural exports on third markets.⁴ The Kennedy Round was also motivated by a strategic interest in strengthening the western capitalist system in the face of Soviet competition at what was the height of the Cold War following the Cuban missile crisis (Evans 1971).

The enhanced market power of the EEC, thanks to the CET, facilitated significant mutual, linear tariff reductions averaging 30 per cent in manufactures. This necessitated concessions from the US Congress, which viewed tariff reductions of more than 20 per cent as going beyond the 'peril point' at which US industries would be injured. The Trade Expansion Act of 1962 in fact provided for up

³ Trade diversion is the reduction of more competitive imports from a third country as a result of a tariff preference established between members of a customs union or free trade area. Less competitive products are imported from within the preferential area because of the lower tariff. Generally speaking, trade diversion always accompanies the trade creation resulting from a preference.

⁴ For agricultural trade in general see Chapter 8.

to 50 per cent reductions.⁵ In terms of non-tariff rules, there was agreement on antidumping measures that sought to codify practice in this field, but neither this nor the abolition of the American Selling Price (ASP) tariff system for chemicals was implemented by the US Congress. Such selective approval of agreements by the US Congress led ultimately to the introduction of the so-called 'fast-track' procedure in 1974 that would provide only for approval or rejection of a trade agreement, and not of selected parts. EEC opposition blocked the reintroduction of GATT discipline over agriculture but in May 1967 the foreign policy considerations of the State Department prevailed in the face of opposition from the US Department of Agriculture and the US Executive opted for an agreement without agriculture rather than no agreement.

The Kennedy Round was more transatlantic than multilateral. Other developed economies, such as Australia, had ambiguous positions on liberalization and although the 1960s saw many developing countries (DCs) join the GATT on independence, these were accommodated by the introduction of Part IV of the GATT (see also Chapter 18). Part IV facilitated the exemption of DCs from the obligation of making reciprocal liberalization commitments, whilst guaranteeing them MFN treatment under Article I. Developing countries favoured this because it allowed them to follow the development paradigm of the time which was the promotion of infant industry policies as a means of ensuring economic as well as political independence (see Chapter 2). For the developed countries Part IV simplified negotiations by removing many smaller economies from the equation, but the adoption of Part IV in 1964 and the subsequent enabling clause effectively created a two-tier trading system.

The Tokyo Round 1973–9: Containing New Protectionism

Launched with the Tokyo Declaration in September 1973, this GATT round was the product of US pressure for stronger GATT discipline of what it saw as the 'unfair' policies of its main trading partners. Agreement to negotiate had formed part of the Smithsonian Agreement of December 1971 that sought to ease tensions following the end of dollar convertibility with gold and the 1971 imposition by the United States of a 10 per cent tariff to pressurize the Federal Republic of Germany and Japan to revalue their currencies. Faced with a rising trade deficit, the United States argued that its competitors needed to revalue their exchange rates and stop intervening to support national champions by means of subsidies, preferential use of public contracts and technical barriers to trade. For the United States therefore

⁵ The timetable of trade negotiations up to and including the Uruguay Round has been in effect determined by US trade legislation. For example, it was no accident that the Kennedy Round negotiations finished one day before the expiry of trade authority under the 1962 Trade Expansion Act. The timetable of other rounds has been similarly influenced by the existence and duration of negotiating authority granted by the US Congress.

the trade agenda had to be extended by including such non-tariff or behind-the-border issues and by strengthening the dispute settlement provisions of the GATT to improve enforcement of the rules. There was also a concern, shared by the European Community, about increased competition from Japan, the Newly Industrializing Countries (NICs) and DCs in low value added sectors such as textiles and clothing. In other words, the trade agenda was already being extended and responding to a shift in the balance of market power.

The negotiations were therefore framed by the United States and driven by domestic interests to include tariffs, agriculture and non-tariff issues on the agenda.⁶ The EC resisted pressure to liberalize agriculture and to impose tight disciplines on the 'non-tariff barriers' because most EC member states made use of industrial policy-type instruments.⁷ Both the United States and EU included textiles and clothing on the agenda. Japan and the NICs were keen to see more discipline of contingent protection by the EC and United States in the form of antidumping or voluntary export restraint (VER) agreements, but resisted the EC's idea that the GATT safeguard provisions should be reformed to allow for selective safeguards.

Progress in the negotiations was held up by international events. Following the Yom Kippur War of October 1973 and the Arab oil embargo, there followed the first oil crisis, a fourfold increase in oil prices in late 1973. The rising tide of 'new protectionism' in the form of voluntary export restraint agreements against exports from the NICs, however, strengthened the desire to conclude an agreement. The G7 summits, established in 1975, provided political support and, in the run up to the 1978 Bonn summit, a nine-page outline of an agreement was tabled. The end result was modest compared to the Kennedy Round. There were tariff reductions averaging 35 per cent over eight years to 1988 based on the Swiss formula favoured by the EC because it helped bring down US tariff peaks.⁸ But 'sensitive' sectors were excluded from cuts. Codes were agreed on subsidies and countervailing duties, customs valuation,⁹ technical barriers to trade and a government procurement agreement (GPA), but these were too weak to have much effect. Likewise the revised

⁶ The US Secretary of State Kissinger sought to include scope to offer the Soviet Union MFN status in the trade legislation as part of the US détente policy, but this ran into problems in Congress which, in the Jackson–Vanik amendment, effectively linked trade to the performance of the USSR on human rights.

⁷ The 1974 Trade Act in the United States provided for a number of contingency measures including the use of countervailing duties against subsidized imports. It also introduced the infamous Section 301 fair trade provision that was to find later application in the 1980s. On the other hand the 1974 Act established Fast Track and modernized US trade policymaking.

⁸ The Swiss formula used was $y = 14x/(14+x)$ which meant for example, that a 20 per cent tariff was reduced to 8 per cent and a 50 per cent tariff to just under 11 per cent (see also Chapter 4).

⁹ Customs authorities designate a customs code for each product. As tariffs vary from product to product, how products are allocated can determine the tariff. The Brussels Tariff Nomenclature of 1950 had been adopted by all GATT members in 1970, but some issues remained, such as the continued use of the American Selling Price (ASP) according

provisions on antidumping failed to impose much discipline, with the US Congress resisting more effective rules on how to determine 'material' injury as a condition for applying duties. There was no agreement on a safeguards code, which meant in effect no discipline of VERs. Following the precedent of the previous negotiations the EC was able to exclude agriculture. Agreement was, however, reached on a Multi-Fibre Arrangement (MFA) that provided an extensive system of protection against textile and clothing imports from NICs and developing countries.

Developing countries were still not inclined to lower tariffs and spent much of the 1970s arguing for a New International Economic Order (NIEO) that would give them a greater say in policy, more development aid, debt relief and access to OECD markets. Under these conditions the two-tier system based on Part IV continued, but now included the Generalized System of Preferences (GSP) that permitted developed economies to offer (autonomous, that is to say, unbound) tariff preferences for developing country exports as another exception to MFN. Qualified MFN was also used for the non-tariff barrier codes that were signed only by the developed OECD economies. The Tokyo Round therefore witnessed the emergence of a form of 'club model' in which the agenda and negotiations were shaped by the leading OECD economies rather than the United States. But the 'multilateral' system still excluded the Soviet bloc and, effectively, the developing countries of the South.

The Uruguay Round 1986–94: Towards an Inclusive, Rules-based System

The period of the Uruguay Round (UR) negotiations marked a significant *broadening* of the trading system in the form of a more active participation by more countries and an associated increased heterogeneity of the trading system, as well as a *deepening* with the most significant increase in the scope of the trade regime to date. There was also a shift to a significantly more rules-based international trading system.¹⁰ As in previous decades it was the United States that pressed for this agenda from the early 1980s (Bergsten and Cline 1982). Although no agreement on launching a new comprehensive round could be reached at the 1982 GATT Ministerial meeting, mainly because of European reluctance, work on an agenda including agriculture, services and intellectual property began in the OECD. By the middle of the decade the reform in the European Community in the form of the single European market for goods and to a lesser degree services and a move

to which tariffs on chemical imports into the United States were based on the selling price of the chemical.

¹⁰ For general histories of the Uruguay Round see Golt (1988) for the early stages, Croome (1995) and Stewart (1993) for a detailed negotiating history.

away from promoting national champions, brought about a shift in the EC towards a more liberal, rules-based approach to external trade and investment.

The decision to establish a Preparatory Committee for the new round was effectively taken by a club of OECD members in April 1985 (Preeg 1970: 54). As the negotiation progressed it became clear that it was the Quad (United States, EC, Japan and Canada) – and within this, the US–EC duopoly – that shaped the agenda and determined progress (Woolcock 1990). The most important developing countries in the Preparatory Committee, Brazil and India which led the so-called ‘Group of 10’ (G10), opposed a new comprehensive round. The G10 was not able to block progress towards a new round because a number of NICs were keen to see a strengthening of the rules to contain EC and US protectionism. The G10 of the 1980s could be seen as a rather less successful forerunner of the G20 established under similar leadership in 2003 (Narlikar 2010). The G10 aside, the UR was not characterized by the type of North–South divisions seen in the Tokyo Round. Issue-based coalitions were formed, such as the Cairns group of agricultural exporters and the Café au Lait group, led by Colombia and Switzerland. Japan and the Asian NICs, such as Hong Kong, were also more active.

The UR resulted in a more inclusive WTO with the ending of Part IV, of the qualified MFN codes and of the two-tier trading system by means of a ‘Single Undertaking’. This was an aim of developed countries that wished to deal with free riding and to ensure that the stronger NICs graduated to full membership of the trading system. Special and differential treatment (SDT) for developing countries remained, but in the form of expectations of less-than-full reciprocity in commitments or longer transition periods to adopt rules. By the end of the round in 1994 the Cold War had ended and many transition economies, though not Russia, were joining the WTO. Thus although the Round was shaped by the OECD Club or the Quad, the outcome created a far more inclusive international trading system. Indeed by the time China joined in 2001 one could say the WTO was a global organization in a way that the GATT never was.

Reaching Further Beyond Market Access

The UR was the most comprehensive round of negotiations to date. Not only were all the agenda items inherited from the Tokyo Round revisited, but significant new issues were added in the form of services, investment and intellectual property rights (initially limited to counterfeit goods). Tariff reductions were based on targets for average cuts and zero-for-zero agreements in which tariffs were removed in certain sectors. The result was an overall average reduction of 30 per cent in tariffs, but tariff peaks, the higher tariffs for certain more sensitive products, remained. Developed countries average bound MFN tariffs in manufactures were reduced to between 4–5 per cent, with average tariffs in agriculture of around 15 per cent. Developing country bound MFN tariffs in manufactures were higher in a range

between 15 and 50 per cent, with higher rates again for agriculture.¹¹ Developing countries also bound fewer tariff lines.

Agriculture was brought back under GATT discipline in the UR in the face of dogged EC resistance thanks to pressure from the United States and the Cairns group, but the level of actual liberalization was fairly limited (see Chapter 8). Agriculture was generally the issue that determined the pace of progress in the negotiations as a whole, and the (slow) pace of reform of the CAP in Europe determined the pace of progress in agriculture. There were three pillars to the agriculture negotiations: reductions in export and domestic subsidies and market access (tariff liberalization). After many years of negotiation and many crises, agreement was reached on agriculture between US and EC negotiators in Blair House in Washington in November 1992. After further internal debate and controversy within the EU, the final outcome was a reduction of 21 per cent in the volume of exports benefiting from export subsidies, a 20 per cent reduction in domestic subsidies and a 36 per cent reduction in tariffs, an outcome that was rather nearer the EC than the declared US aim of elimination of all subsidies.¹²

Of the new issues the Trade-Related Intellectual Property Rights (TRIPs) proved to be the most controversial. This constituted a significant shift towards establishing positive obligations on WTO members. The GATT tends to require governments to not do things, but the TRIPs, which was favoured by research-intensive industries, such as pharmaceuticals in the United States, Europe and Japan, requires all signatories to the WTO to comply with a number of international conventions covering protection of patents, literary and other rights (see Chapter 16). Noncompliance with these conventions opens the country concerned to the threat of trade retaliation. TRIPs was opposed by DCs because it was seen as benefiting the developed economies and limiting the ability of DCs to access technology and essential medicines at a reasonable price. But ultimately the developing countries accepted the TRIPs agreement when offered the carrot of liberalizing textiles and clothing and threatened with the stick of US unilateral trade sanctions for non-enforcement of IPRs under Section 337 of the US Trade Act.

The General Agreement on Trade in Services (GATS) was, in comparison, less controversial. This consisted of a framework agreement and a series of commitments to apply MFN and national treatment to foreign suppliers of services, whether these services were supplied across borders (Mode 1), by means of the consumer moving to another country to obtain a service (Mode 2), by investment or establishment of the service provider in the host country (Mode 3) or by workers entering the host country market (Mode 4) (see Chapter 9). The GATS outcome has been seen as a glass half empty, because 'liberalization' was generally little more than a

¹¹ Bound MFN tariffs are the rates that WTO members cannot exceed. Many countries and especially developing countries generally have lower applied tariffs. For example, developing country average applied tariffs are nearer the range of 10–15 per cent for manufactures. The difference between the applied and bound tariff rates provides countries with flexibility to increase tariffs and is termed the 'water' in the tariff.

¹² On the outcome of the Uruguay Round see Schott (1994).

commitment to bind what had in any case been liberalized unilaterally. Mode 3 commitments in the GATS constitute commitments to provide pre-establishment national treatment for foreign service providers, in other words access for foreign investment. Commitments are made in schedules using positive listing to specify sectors that are included, but also negative listing within these sectors to exclude certain activities. For example, a positive listing could mean business services are covered, but a negative listing could then exclude lawyers. Investment in the Round also came in the shape of Trade-Related Investment Measures (TRIMs) negotiations. The TRIMs covered 'performance requirements' on investors by host governments, such as those specifying local content or export requirements. Host governments require these in an effort to ensure that foreign investment contributes to value added in their economy. The TRIMs agreement prohibited six core performance requirements, but stopped a long way short of a full investment agreement covering liberalization and investment protection.

The negotiations in the 1980s also produced more effective GATT rules on non-tariff barriers. The Tokyo Round codes were replaced with fully fledged agreements. In some cases, such as antidumping, a good deal of discretion was left for national governments, but the agreements generally strengthened multilateral disciplines. On safeguards, multilateral discipline was effectively re-established over VERs one of the main instruments of new protectionism. The non-selective character of Article XIX was largely retained and all VERs had to be notified to the WTO and phased out. On subsidies GATT rules were made more operational by reaffirming the ban on selective state subsidies, but permitting support for general R&D, regional development and environmental policies. To this end a 'traffic light' system was introduced that classified aid as totally banned (red), potentially trade distorting and thus subject to countervail (amber) and permitted (green).¹³ The rules for applying countervailing duties were also tightened.

A more sophisticated approach to technical barriers to trade (TBTs) was also developed that followed the EU model by distinguishing between mandatory technical regulations, conformance assessment and voluntary standards. National treatment remained the norm for (mandatory) regulations and conformance assessment and a voluntary code was established for standards-making bodies. EU experience was also followed with provisions promoting mutual recognition and the use of agreed international standards. In the related field of sanitary and phytosanitary (SPS) measures, the agreement reached was one that permits controls on imports that threaten human, animal or plant health, but only when these are based on scientific evidence and are not disguised forms of protection. In cases where there is a potential risk, but not yet sufficient scientific evidence, the Agreement on SPS allows for the use of precautionary measures until such evidence is available. When this agreement was negotiated European consumers had not yet been exposed to 'mad cow disease' (Bovine Spongiform Encephalopathy or BSE). Under consumer pressure following the case of 'mad cow disease' in which scientists had assured consumers that beef with BSE was safe to eat when it was

¹³ The 'traffic light' regime was due for review in 1999 but was not extended.

not, a number of European governments moved, in conflict with the SPS rules, to ban certain products regardless of existing scientific evidence.¹⁴

Finally the negotiations reached beyond the border in adopting a plurilateral Government Procurement Agreement (GPA) that formed part of a political package with the UR rather than part of the Single Undertaking. The GPA (1994) strengthened the framework rules agreed in the 1979 GPA and included in particular a 'bid challenge' provision that enables aggrieved tenderers to challenge decisions by (public) purchasing entities that they consider to be illegal. It also introduced tighter, more extensive rules on transparency and contract award procedures. The second element of the GPA is a set of bilateral, reciprocity-based 'liberalization' negotiations on coverage specifying which government departments, levels of government and public enterprises are required to comply with the rules. Thanks in part to an extension of the EU regime to include public utilities, the 1994 GPA had broader coverage but not many more signatories than the 1979 agreement.

The UR therefore constituted the most significant extension of the scope of the international trade regime to date. Included in its definition of trade were many measures that reached well beyond border measures and into areas that had previously remained under national policy autonomy. The UR also moved beyond national treatment to require positive action by signatories to the WTO to comply with certain agreed international standards.

Institutional Strengthening

The UR strengthened the multilateral institutions. In 1988 as part of an 'early harvest' the Trade Policy Review Mechanism (TPRM) was established. The TPRM provides for regular peer reviews of all WTO members' trade policies, based on reports produced by both the WTO member concerned and the WTO Secretariat. The UR also established the World Trade Organization (WTO). Based on a Canadian proposal in 1990, the idea of creating a stronger institution found widespread support, with the most vocal opposition coming from the US Congress that feared it would encroach upon its sovereignty. The agreement establishing the WTO largely codified existing GATT practice, such as one member one vote, but with consensus of all countries present and not objecting as normal practice. The WTO incorporates the GATT (1994) the revised GATT, the GATS and TRIPs agreements. In order to ensure that the Single Undertaking was effective, GATT 1947 was wound up and all countries wishing to benefit from the strengthened rules-based system that is the GATT/WTO were obliged to sign up to the WTO. One innovation with the WTO was the creation of regular biennial Ministerial meetings.

Last but by no means least, the UR included the Understanding on Dispute Settlement (UDS) (Jackson 1998) (see also Chapter 21). This finally ended the ability of individual countries to veto the adoption of dispute settlement panel reports,

¹⁴ There then followed a number of actions against the EU under WTO dispute settlement on beef hormones and genetically modified products.

something the United States had been seeking for decades. Henceforth panel reports were considered adopted unless there was a consensus against doing so. An Appellate Body (AB) was also added in order to ensure that panel decisions were coherent and consistent with established GATT/WTO principles. The UR negotiations, concluded by D-G Peter Sutherland in December 1993, therefore produced a comprehensive, rules-based and global trade regime.

The Doha Development Agenda (DDA): Modest Ambition for the WTO

The assumption among the trade policy community after the completion of the UR was that the next stage would be an extension of the trade regime to cover investment. Given the nature of international markets and the close links between trade and investment, the absence of comprehensive multilateral rules on investment was seen as an anomaly. At the first WTO Ministerial meeting in Singapore investment was therefore included on the agenda.¹⁵ Other topics for discussion were competition policy and government procurement which, together with investment and trade facilitation, became the 'Singapore issues' most strongly promoted by the EU and Japan. Indeed, it was around this time that the EU emerged as the main proponent of a new round of comprehensive negotiations. But the balance of influence in the WTO was shifting. Having joined 'the club' with the Single Undertaking, developing countries expected to have a say in shaping the rules. Economic growth, combined with relatively high tariffs, in a number of emerging markets also gave these WTO members more leverage than the G10 had had in the previous decade. In comparison, the OECD markets, although still much bigger were growing more slowly and had already liberalized much of their economies.

The EU lead had only lukewarm support from the United States and faced opposition from many developing countries. In 1998, at the second WTO Ministerial meeting that marked 50 years of the GATT, the United States agreed to support efforts to launch a new round, but these failed in Seattle in late 1999 due to differences between the OECD economies, opposition from developing countries, which believed an agenda was again being imposed upon them by the OECD countries and a lack of resolve on the part of national governments in the face of growing civil society opposition to 'globalization' (Schott 2000).

The DDA was finally launched in Doha in December 2001, thanks in part to the use of 'constructive ambiguity' in the wording of the *communiqué*. Failure in Seattle had also been, in part, due to efforts to agree on a very detailed text. The EU remained the main '*demandeur*' for a new comprehensive round, in which it sought

¹⁵ For a discussion of the priorities for the new round as seen in 1996 see Schott (1996) and OECD (1996).

progress on the Singapore issues and market opening for services and manufactures in the larger emerging markets, in return for concessions on agriculture. The EU strategy favoured multilateral negotiations over preferential agreements and adopted a de facto moratorium on new preferential trade negotiations in 1999. In contrast to previous rounds, the United States provided only qualified support for a comprehensive round from 2001 when it obtained new Trade Promotion Authority. The US Administration began pursuing an active policy of 'competitive liberalization'. This was a pragmatic approach in which bilateral, regional or multilateral approaches to liberalization were to be pursued depending on which offered the best prospects of results. Developing countries illustrated their intention to have a greater say by first making the launch of the DDA conditional upon a statement interpreting the TRIPs agreement in a way that favoured developing country interests. This was the Doha Declaration on TRIPs and essential medicines. Secondly, the developing countries led by India insisted on an 'explicit consensus' on the final agenda. As smaller DCs or least developed countries (LDCs) are sometimes not present in negotiations and often remained silent when they were, specifying explicit consensus clearly gave the DCs a stronger veto power.

Between 2001 and 2003 a limited commitment to a new round combined with a general economic slowdown in 2001 slowed progress on the 'modalities' for negotiation. In an effort to move things along the EU and United States produced a joint text on agriculture in the run up to the 2003 WTO Ministerial Meeting in Cancun. Given that transatlantic differences on agriculture had determined the pace of the UR there was a belief, not shared by all policymakers in the EU, that an EU-US agreement would help. In effect the reverse was the case. The joint text was seen by the major developing countries as a bid to sustain a transatlantic duopoly over the trade agenda and continued protection for EU and US special agricultural interests, while pushing for DC concessions on other issues, such as services, non-agricultural market access (NAMA) and the Singapore issues. Brazil and India, joined now by China and other developing countries, formed the G20 and came forward with alternative proposals that made the overall ambition of the round dependent on the willingness of the EU and United States to make concessions on agriculture. The Cancun meeting, which was supposed to map out a course for the DDA, failed even though the scale of ambition had been reduced by the EU effectively taking the three most controversial Singapore issues (investment, competition and government procurement) off the table.

A more modest agenda was put together in the shape of the August 2004 Framework Agreement. This excluded the Singapore issues, except trade facilitation, and focused on the traditional topics of agriculture and NAMA. Even services slipped to a less than central position and although other topics were included in the negotiations, such as rules on regional trade agreements, antidumping and some aspects of intellectual property rights such as geographic indications (GIs), it became clear that the main substance of the negotiations concerned agriculture and NAMA. In these the G20 sought progress on agriculture from both the United States (reductions in domestic support) and the EU (elimination of export subsidies and lower tariffs). In return the EU and United States sought reductions in tariffs

on manufactures in the major emerging markets as well as progress on services. As always this simple depiction of the G20 against the EU and United States or perhaps the OECD countries is inaccurate. In reality the picture was much more complex with tensions within both 'blocs'. For example, there was certainly some concern among China's G20 partners as well as within the United States and EU about lowering tariffs on products in which China was already very competitive.

The DDA stumbled on through times when there appeared to be some progress, such as at the Hong Kong 2005 WTO Ministerial meeting, and times when negotiations were 'on life support' (Lee and Wilkinson 2007). In 2007 and especially in 2008 major efforts were made in the various negotiating groups in Geneva and in high-level meetings away from the glare of the news media that had accompanied the big WTO ministerial conferences. In 2008 an agreement was near after progress was made on the modalities for tariff and subsidy reductions in agricultural and tariff reductions in NAMA.¹⁶ But the negotiations failed, ostensibly on the issue of a special safeguard mechanism (SSM) for agriculture in which India with support from China wanted scope to re-impose tariffs in the event of import surges of agricultural products in order to protect its subsistence farmers. The United States in particular saw the proposals as a means of maintaining or even increasing protection, rather than safeguarding food security. In reality however, the main hindrance to agreement was a lack of domestic political support among key WTO members (see also Chapter 2).

The Rise of Bilateralism

As noted above, a number of WTO members were already considering active free trade agreement (FTA) policies before and as the DDA was launched. There had been a strengthening of EU integration in the mid-1980s and the adoption of the Canada-US FTA (CUSFTA) in 1988. In 1990 negotiations began on a wider North American Free Trade Agreement (NAFTA) to include Mexico. Arguably FTA activity began even before the end of the UR. At the time this was seen as facilitating multilateralism, but it could also be argued that by early 1991, the broad outlines of the UR could be seen in the Dunkel Text.¹⁷ So that those interests seeking more in terms of access or rules would turn their minds to alternative negotiating fora, such as bilateral agreements, given that the next chance of getting satisfaction from the multilateral agenda was clearly going to be years away. In the early 2000s FTA activity increased and as the DDA began to falter and the ambition of the multilateral approach was reduced, FTAs began to be seen as alternatives to

¹⁶ For details of the Chair's negotiating texts and progress reached in the various negotiating groups at this stage see WTO documents at www.wto.org/english/tratop_e/dda_e/dda_e.htm.

¹⁷ The GATT Director General Arthur Dunkel produced what was intended to be a compromise final text in December 1990.

multilateral negotiations. Indeed, one could argue that the option of the bilateral alternative reduced the incentive to negotiate multilaterally. Whatever the motives, FTAs became a central feature of the international trading system during the 2000s. This has raised questions concerning the compatibility of FTAs with a multilateral trading system and whether FTAs are 'building blocks or stumbling blocks' for a wider system (Heydon and Woolcock 2009). As time progressed and it became clear that the increase in FTAs was not a temporary phenomenon the debate shifted more to whether it would be possible to 'multilateralize regionalism' (Baldwin and Thornton 2008). Whilst the terms regionalism and regional trade agreements continued to be used, the trend during the 2000s was very clearly towards bilateralism.

The number of FTAs increased but so did their scope, with agreements involving the major OECD economies being especially more comprehensive.¹⁸ For example, the US agreements all included comprehensive investment provisions and TRIPs plus provisions on intellectual property rights. The EU agreements often included, in one form or another, the Singapore issues as did Japan's agreements (Heydon and Woolcock 2009). Bilateral agreements were in most cases North–South agreements negotiated between the developed and developing countries. In practice the spread of comprehensive regional and bilateral agreements began to establish *de facto* international norms on investment and other Singapore issues even though these had been excluded from the multilateral agenda. As the regional and bilateral agreements were generally rules-based with developed dispute settlement procedures, they also led to a further consolidation of a rules-based order.

The balance between multilateral and regional or bilateral approaches will in the future depend on progress in multilateral negotiations and whether bilateral and regional approaches can be made compatible with a wider international system. At the WTO level there have been efforts to enhance the multilateral rules on FTAs starting with improved transparency, but operational rules under Article XXIV GATT have remained elusive (WTO 2006). The threat of bilateral agreements may, however, not be as great as is sometimes stated. Although they create preferences in terms of tariffs and discrimination in some other areas of market access and policy, more comprehensive bilateral and regional agreements may be less distorting if they promote transparency, regulatory best practice and the use of agreed international standards.

Conclusions

What lessons can be drawn from this summary of the evolution of the trading system? First, if the evolution is compared to the debate on substantive policy issues

¹⁸ Many FTAs especially between developing countries appeared, at least when first concluded, to serve more of a signalling function than agreements that would be rigorously implemented and enforced.

and topics, it should be clear that the vast majority of issues in the current debate are not new. International trade policy and the construction of an international trading system is an iterative process. The current debate can therefore be informed by knowledge of what went before.

Second, the international trading system has accommodated significant shifts in relative economic or market power during the post-1947 era. It has also found ways of accommodating large numbers of countries and countries at different levels of development. This suggests that the shift in the relative market power towards the large emerging markets and the inclusion of a large number of developing countries in the WTO need not be an insurmountable problem. If it was possible for the trading system to adapt to shifts in influence in the past it may be possible to do so again.

Third, the coverage of the international trade regime has been defined by the dominant trading nations or regions or the period. The definition of what is 'trade' has changed over time. There is no reason to believe that this will not continue to be the case. The GATT 1947 was shaped by the United States as was the trade agenda right into the 1980s. Once the EU established an internal consensus on trade it then began to seek to shape the trade agenda. As new trade powers emerge they can be expected to have an increasing influence on the nature of the agenda. But much will depend on the level of negotiation. Within the WTO the DDA negotiations pitted the EU view of the multilateral trade regime, and to a lesser degree that of the United States and other developed economies, against that of the G20. But in bilateral FTAs the EU and United States still retain their asymmetric power.

Fourth, the international trading system has never been a purely multilateral system, if by multilateral we mean a trading system in which there is no discrimination and one that is shaped by all trading nations. The application of the MFN principle to tariff liberalization and other trade barriers is close to a multilateral order, but there have been many exceptions to MFN over the years, such as the qualified MFN codes of the Tokyo Round, the use of various exceptions and continued use of plurilateral agreements. The evolution of the international trading system has also been shaped by a limited number of major economies. This is likely to continue even if the membership of the 'club' varies.

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