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The New World Trade Organization: Pacemaker for World Trade?

The Gatt Uruguay Round was finally brought to a conclusion in April following long-drawn-out negotiations. What changes are contained in the new agreements? How should we rate these changes? How important will the future World Trade Organization (WTO) be?

With the signing of the final documents of the Uruguay Round by 121 countries on 15th April 1994 in Marrakesh a new world trade order was called into being and the negotiation process, which had lasted longer than seven years and occasionally been declared dead, was successfully concluded. With a great deal of luck the agreements will be ratified in the course of this year, so that on 1st January 1995 the World Trade Organization can start work and the negotiation results can begin to be put into practice. The wide-ranging set of agreements is intended to help overcome the old Gatt's shortcomings and deficiencies:

☐ Important Gatt rules and procedures were often ignored by trading countries. Examples of this are the safeguard clause (Art. 19) and the dispute settlement procedure (Art. 23): here, multilateral solutions have frequently been pushed aside by bilaterally agreed limits to exports or increases in imports or by unilateral trade sanctions. The interests of consumers or of third countries were ignored.

☐ Numerous regulations were not specific enough. Fuzzy rules on anti-dumping and countervailing duties made their misuse for protectionist purposes tempting. The rules on subsidies were not suited to checking an industrial policy which distorted competition. Imprecise standards for (regional) integration projects encouraged the fragmentation of the trading system.

☐ Several economic areas (agriculture, textiles, aircraft construction) were exempted from the application of the general Gatt rules, while the agreement was not applicable from the beginning to a number of other sectors, activities and problems of growing importance. These "blind spots" in the traditional trade order included services, the protection of intellectual property rights, direct investments and the problem areas where trade, competition, environmental and social standards cross.

☐ The Gatt was primarily designed to regulate – and reduce – intervention in trade *at the border*. With the growing interdependence of national economies, however, the side-effects of *domestic* intervention on foreign economic relations and at the same time the sensitivity of domestic policy to foreign influences began to play an ever greater role. The resulting necessity for international coordination could not be dealt with adequately by the existing multilateral agreement.

☐ The multilateral negotiation process was designed to meet the interests of the industrial countries, while the developing countries made intensive use of the privileges granted them, especially the exemption from reciprocity. Non-reciprocity, however, often meant non-participation in the negotiations. With the advance of the newly industrializing countries and the generally increasing interest in exports on the part of the developing countries, a reorganization of negotiations on a broader basis, with regard to both the participating countries and to the subjects of negotiation, was called for in order to create additional opportunities for the exchange of concessions.

Tariff Negotiations

The active and constructive participation of the developing countries was a major feature of the Uruguay Round. In the tariff negotiations they granted quid pro quos of considerable size for the first time. For example, Hong Kong, South Korea and Singapore are among the eleven countries[1] which have agreed to eliminate tariffs completely on ten product groups.[2] No less important than the reductions in tariffs is the sharp increase in tariff

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bindings. For 72% of their tariff lines for industrial products the developing countries will not in future be allowed to increase their tariffs unilaterally beyond a set limit. Before the Uruguay Round the corresponding figure was 22%. The import share of products with bound tariffs is about 60% (previously 14%).[3] Market access in the developing countries is thus decisively improved and the confidence with which exporters can plan is increased.

This willingness to grant reciprocity has paid off: the average (weighted by the corresponding trade flows) tariff rate on imports of industrial goods by the industrial countries from developing countries[4] will fall by 37% and thus to roughly the same extent as the corresponding tariff for products from industrial countries (38%).[5] The escalation of tariff rates according to degree of processing is also distinctly reduced.[6] Conditions for the diversification of developing countries' exports will improve accordingly.

Altogether the industrial countries' tariffs on industrial goods will fall from 6.3% to 3.9% on (an unweighted) average by 1999.[7] The share of duty-free imports in these countries' total imports of industrial goods will rise from 20% to 43%, while products with peak tariff rates[8] will only account for 5% of imports (previously 7%).

Changes in the Textile Trade

One important exception from the general trend, however, is the textile industry. The share of imports carrying high tariffs will, at 28% (as compared to 35% previously), remain at a high level. The small scale of the tariff reductions from an average of 15.5% to 12.1% can partly be explained by the fact that in future tariffs are to take over a part of the safeguard function which was fulfilled until now by binding import quotas.[9]

For the developing countries the reduction of the bilateral quota regulations sanctioned by the Multi-Fibre Arrangement (MFA) was a *sine qua non* for their participation in the Uruguay Round. If the new textile agreement comes into force as planned at the beginning of next year, the following rules will be operative:

☐ On 1. 1. 1995 at least 16% of the import volume (base year 1990) of the products covered by the MFA must be placed under the Gatt rules and the growth rates applying for 1994 to the quotas not yet liberalized must be increased by 16%.

☐ At the beginning of 1998 and 2002 a further 17% and 18% respectively of imports are to be liberalized and the growth rates of the remaining quotas to be raised by 25% and 27% respectively.

☐ On 1st January 2005 the remaining categories of goods, i.e. 49% of the volume of imports, are to be integrated into Gatt.

The removal of the MFA restrictions and other non-Gatt-conforming barriers to imports[10] will increase international trade flows in the textile industry and improve welfare in the participating countries. According to estimates by the European Consumer Association, the developing countries can expect an increase in trade to the tune of US$ 40 to 50 bn and consumers in the industrial countries can expect price reductions of 5%.[11]

For several reasons, however, the reduction in trade discrimination in the textiles sector could remain considerably below expectations:

☐ The progression in the reduction and raising of quotas built into the textile agreement is deceptive, as the "hard

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[1] The other countries are Austria, Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the European Union.

[2] Building equipment, agricultural implements, medical apparatus, steel, beer, distilled spirits, pharmaceutical products, paper and printed products, furniture, toys.

[3] These shares are still far below the corresponding percentages for the industrial countries (and the countries undergoing transformation) which completed the binding of their industrial goods tariffs in the Uruguay Round. The developing countries have increased their share considerably, however. Latin America has, at 100%, already reached the level of the industrial countries. In developing countries, though, the tariffs are often bound at a rate above the level actually imposed – which have often been greatly reduced recently – thus allowing room for unilateral tariff increases.

[4] Without the least developed countries.

[5] If textiles and clothing, as well as fish and fish products, are left out of the calculation the developing countries, at 51%, even do much better than the industrial countries (at 44%). For imports of industrial products from the least developed countries the reductions in tariffs in the industrial countries are 25% altogether, and 59% without textiles and fish.

[6] At the transition from raw materials to semi-finished goods the de-escalation (measured as the percentage reduction of the differences between the average tariff rates) is 38%, and from semi-finished products to finished products 23%.

[7] For some products (e.g. textiles) the reduction in tariffs will take longer.

[8] These are tariff rates of over 15%.

[9] If there are binding import quotas the respective tariffs are essentially reduced to a distributional instrument, since the tariff actually imposed is obviously lower than the tariff equivalent of the quota.

[10] These measures, which are mainly EU agreements with ACP countries, Mediterranean countries and other contract partners, are either to be brought into line with Gatt in 1995 or progressively abolished.

[11] Cf. "Kritik an halbherzigem Liberalisierungsfahrplan", in: Handelsblatt, 15. 4. 1994.

[12] The importing countries have to include goods from four different categories (fibres and yarns, woven cloth, textile manufactures, clothing) both at the first integration stage and in the two following intermediate stages, but it will probably be possible to find enough less sensitive goods in each case – especially as these integration stages only have to include 51% of the total imports to be integrated – so that the integration of the critical categories can be postponed to the end of the term of the agreement.

core" of protectionism – the safeguarding of particularly "sensitive" commodity groups – is likely to remain largely untouched for ten years.[12]

□ A *specific* textile safeguard clause allows importing countries to apply new safeguard measures selectively against individual exporting countries during the term of the agreement if an actual or threatened increase in imports from those countries causes or threatens to cause serious damage to the domestic industry.

□ Even for the period following integration into Gatt the textile industry in the importing countries is not without safeguards. The new general Gatt safeguard clause, which will then be binding for the textile sector too, allows specific import restrictions against growing exporters for a period of up to four years if the exports are growing "disproportionately" and causing serious domestic injury.

It is to be expected that the importing countries will make relatively frequent use of the selectivity option. The main sufferers will probably be suppliers who are not yet well-established, as their exports are most likely to grow "disproportionately".

Liberalization of Agricultural Trade

With the accelerating increase in subsidies for agriculture, under pressure from the USA and the Cairns Group[13] agricultural trade became the focus of attention of the Uruguay Round. The USA demanded the complete liberalization of agricultural trade by the year 2000, while the EC and Japan wanted their level of protection to remain largely unchanged. The entire round almost failed in 1990 as a result of this problem. A breakthrough was not achieved until 1992. By 2001 (2005 for developing countries[14]) a partial liberalization is to take place: all non-tariff barriers to trade must be converted into tariffs;[15] these are to be reduced by an average of 36% in the industrial countries and 24% in the developing countries;[16] there is a reduced tariff rate for products, imports of which make up less than 3% of domestic consumption.

On the other hand, *additional tariffs* ("special safeguard clause") can be applied if the volume of imports exceeds a relatively low ceiling or the importing price falls below the average price for 1986 to 1988. As a result of the present low world market prices, this clause will take effect immediately. In addition, a "special treatment" clause allows the maintenance of non-tariff barriers to imports under certain conditions.[17]

The industrial countries must reduce their "aggregate measurement of support"[18] by 20% (developing countries by 13.3 %).[19] An exception is made for a number of subsidies not directly connected with production.[20] Export subsidies are to fall to 64% of the 1986-1990 average, and the volume subsidized is to fall to 79% (76% and 86% respectively for developing countries). The massive, and economically unjustified, subsidizing of agriculture therefore remains possible; it will continue to distort production and trade.

On the whole, agriculture liberalization gets stuck halfway in many areas. Due to the definition of reference periods, the exclusion of a number of types of subsidy and the inclusion of numerous safeguard mechanisms, a radical reduction of protectionism cannot be expected for the time being. Improvements are essential in this sphere, and due to the increasing fiscal bottlenecks they should also be politically possible.

The Gatt secretariat expects there to be an increase in world exports of at least US$ 755 bn (20% of world exports in 1992) and in global income of US$ 235 bn[21] by 2005 due to the decreases in tariffs on industrial goods, the elimination of the MFA quotas and the liberalization of agriculture. Actually, for various reasons the above figures substantially underestimate the true trade and income

[13] The Group consists of a number of Asian and Latin American countries which are exporters of agricultural products as well as Australia, Canada and Hungary.

[14] The least developed countries are freed from these obligations.

[15] This calculation is based on the difference between the world market price and the domestic price (the intervention price plus 10% in the case of the EU) for the years 1986 to 1988.

[16] This reduction is unweighted, however. It is therefore possible to make large reductions for unimportant products so as not to have to reduce protection to the same extent for other products. The tariff reduction must be at least 15% for each product. The actual average tariff reduction is 37%; it ranges from 26% for milk products to 52% for spices and tropical flowers. In the base period (1986 to 1988) the tariff equivalent was particularly high due to low world market prices and high intervention prices, so that part of the tariff reduction has already implicitly taken place.

[17] The conditions are: the imports of the raw product and its worked products must have been less than 3% of domestic consumption in 1986 to 1988; since 1986 there have been no export subsidies for the manufactured products; for manufactured products a minimal access of 4% of domestic consumption in the base period 1986 to 1988 must be guaranteed, to be increased annually by 0.8%.

[18] This includes the direct subsidies paid in 1986, the support of the market price (compared to the average import price for the years 1986 to 1988) and input subsidies.

[19] As the level of subsidies was particularly high in 1986, the subsidy reduction which is to be implemented in future is often much lower.

[20] These are, for example, income subsidies and structural adjustment subsidies as well as regional promotion and aid for environmental protection.

[21] Calculated at 1992 prices (cf. News of the Uruguay Round, April 1994, p. 23). The income effect is estimated by the OECD to be even higher: US$ 274 bn by the year 2002 (cf. OECD: Assessing the effects of the Uruguay Round, Paris 1993). A study by the OECD together with the World Bank estimates an income gain of US$ 213 bn by 2002. This does not take into account the effects of the reduction of quotas in the textile industry; cf. I. Goldin, O. Knudsen and D. van der Mensbrugghe: Trade liberalisation: global economic implications, Paris 1993.

effects of the Uruguay Round. First, they do not include the avoidance of losses in trade and income that would probably have occurred had the Uruguay Round failed. Apart from that, growth effects from stronger competition, investment incentives, increased research activities etc. are not taken into account. Furthermore, the steps towards liberalization in the services sector have been ignored. Finally, the results of the Uruguay Round for the international economic system as such have not been taken into consideration: the creation of new, and the modification of existing, rules, procedures and institutions for international trade in goods, the exchange of services and the protection of intellectual property.

Rules of Origin

In the field of trade in goods, for the first time a framework of regulations concerning the determination of the origin of goods has been created which is binding on all WTO members. In the face of the growing internationalization of production and of an unbroken tendency to trade discrimination, the new regulation is certainly not only of technical interest. It is intended to limit arbitrariness in trade policy and prevent rules of origin from becoming rules of protectionism. A three-year working programme has been planned for the harmonization of the autonomous rules of origin applied among the WTO members, i.e. those used in the context of non-preferential trade policy instruments. The aim is for uniform rules for all relevant fields of policy.[22]

In contrast to the vague rules of origin of the multilateral Kyoto convention, which are not applied by major trading countries (particularly the USA) anyway, the WTO agreement on rules of origin without doubt represents a step forward which could help to reduce uncertainty in international trade. It remains uncertain, however, whether and when harmonization will in fact be achieved, and the obligations imposed on governments appear as a whole to be too vague and not binding enough.[23]

The treaty does not deal with preferential rules of origin within the framework of unilaterally granted preferences and preferential trade agreements. In a separate settlement, however, the Gatt rules (Art. 24) on the exchange of exclusive trade advantages in customs unions and free trade zones are in part newly defined, in particular with regard to the multilateral integration of the strong regionalist tendencies in world trade.

According to the agreement, the "reasonable length of time" for the creation of a customs union or a free trade zone may in future not exceed ten years.[24] No important sector is to be excluded from internal liberalization. A method of calculation for the common customs tariff is laid down in order to prevent the average level of customs duties from being increased. The compensation rules regarding third countries are made more precise.

However, the new ruling does not offer sufficient guarantee for the safeguarding of the trade interests of WTO members who are outsiders. It is accepted that more trade is redirected from third countries than is created with them. In order to prevent this, the partner countries must be obliged to reduce the level of external protection in parallel to the decreasing of internal trade barriers.[25] In addition, the full observance of multilateral rights, especially for smaller partner countries, and in particular in cases where there is disagreement, must be guaranteed.[26] Last but not least, it is necessary to put a brake on the tendency of partner countries to "export" integration costs (in the form of an increased pressure to adjust to internal trade creation) to third countries by strengthening multilateral discipline (e.g. within the framework of the safeguard clause and anti-dumping regulations).

The Agreement on Safeguards

According to Article 19 of Gatt the contracting parties are allowed to temporarily suspend, withdraw or modify obligations they have entered into, including tariff concessions, if domestic industries suffer, or threaten to suffer, serious injury from an unforeseen increase in imports. The safeguard clause was made use of relatively seldom by the contracting parties in the past, which was due to the cumbersome procedure involved. The non-discriminatory application of safeguard measures de facto meant renegotiation of concessions with all the countries concerned. If no agreement could be reached with regard to the compensation to be made by the importing country, the exporting country had the right to take countermeasures. The place of safeguard actions under Art. 19 was therefore taken increasingly frequently by bilateral export restraint agreements not covered by Gatt.

The safeguard agreement is intended to prevent the further erosion of the Gatt rules via so-called "grey-area

[22] In the agreement on rules of origin the following are named, among others: anti-dumping and countervailing duties, safeguard clause measures, public procurement, discriminating quotas and tariff quotas.

[23] The agreement is relatively specific with regard to the laying down of a positive standard: rules of origin should explicitly define which characteristics establish "origin".

[24] In "exceptional cases" a longer term is possible, however.

[25] Such an external obligation to liberalize could be interpreted as a quid pro quo by the partner countries for the other WTO members' renouncement of their claim to most-favoured-nation treatment and the losses of exports entailed.

[26] Such a "Gatt acquis" is contained in the agreement between the EFTA countries and the former Czech and Slovak Federal Republic, for example. There is, in contrast, no equivalent clause in the EU European Agreements.

measures". Voluntary export restraints (VERs), orderly marketing arrangements (OMAs) or similar measures on the export or import side are explicitly forbidden. All existing grey-area measures must be phased out within four years of the coming into force of the WTO agreement or be brought into line with the valid Gatt rules. As an exception, every importing party to the agreement is allowed to continue only *one* such grey-area measure until the end of 1999, if the exporting countries directly affected agree. This exception is clearly aimed at the automobile pact between the EU and Japan, which is also explicitly mentioned in the agreement on safeguards.

The safeguard actions allowed under Gatt Art. 19 are in principle to be applied in a non-discriminatory fashion and must be limited to the extent which is necessary to prevent or repair a serious injury or to facilitate adjustment. The measures can be applied for a maximum period of four years to begin with, but this can be extended for another four years. If the measures are applied for more than one year the import restrictions must be relaxed progressively. The exporting countries affected by a safeguard measure may not apply any countermeasures for three years.

In the case of quantitative import restrictions, the quotas must be distributed in agreement with all the contracting parties who have a major interest in the supply of the good involved. If this procedure proves to be impracticable, the exporting countries' shares of the total imports of the good in question during a previous representative period are to form the basis for the distribution of quotas. Under certain conditions it is possible to deviate from these regulations, so that in the case of quantitative restrictions there is now the possibility of applying safeguard measures *selectively* under the auspices of Gatt. These are limited to an application period of four years, however.

The three-year non-retaliation period and the possibility of applying safeguard measures selectively increases considerably the attractiveness of the safeguard clause. Basically, the reform of Art. 19 amounts to legitimizing safeguard measures with the same negative effect as "voluntary" export restraints. The misuse of the safeguard clause is not hindered by these regulations, it is only given a time-limit. On the other hand it cannot be denied that the agreement creates more transparency. Whether this is sufficient to check the negative effects on international trade would appear, however, to be open to doubt.

The Anti-dumping Rule

In contrast to Gatt Art. 19, which is concerned with the protection of domestic industries against superior foreign competitors, Art. 6 is directed against supposedly unfair trade practices by foreign enterprises and governments. It grants the contracting parties the right to impose anti-dumping or countervailing duties if an existing branch of the domestic economy is injured by, or threatened with injury from, dumping or subsidies, or if the establishment of a domestic branch is considerably delayed for the same reason. Two additional agreements (the anti-dumping and subsidy pacts), which were already the subject of negotiations in the Tokyo Round, contain more details on the implementation of Art. 6.

The anti-dumping agreement negotiated in the Uruguay Round contains more detailed rules than the old anti-dumping code. These concern the definition of the methods to be used to determine dumping, the criteria to be taken into account for proof of injury, the procedural regulations for the initiation and conduct of anti-dumping investigations, and the implementation and duration of anti-dumping measures. An important new element is the fact that anti-dumping measures must be discontinued at the latest five years after they have come into force, unless an examination shows that it is to be expected that the discontinuation of the measure would mean further or new injury from dumping ("sunset clause"). Another new rule prescribes the immediate suspension of anti-dumping investigations in unimportant cases ("*de minimis* clause"). The agreement also clarifies the role of the dispute settlement panel in anti-dumping cases. It proved impossible, however, to achieve agreement on the setting up of anti-circumvention rules.

Looked at more closely, the agreement appears to be more of an employment programme for bureaucrats. The question poses itself as to what is unfair about foreign companies' supplying to domestic markets at particularly low prices. Serious consequences could only be expected if the companies were able to follow "predatory" dumping strategies, without being in danger of being crowded out of the market. What should be fought against in such a case is not the dumped products as such but the underlying causes, particularly barriers to market entry, which make it possible for the companies to follow "predatory" dumping strategies. The anti-dumping agreement, in contrast, fights the symptoms; whether "predatory" price behaviour is in fact present cannot be ascertained by this method. The emphasis is on the injury suffered from dumped products by the companies competing with these products, while the interests of exporters and consumers are hardly taken into account.

The Treatment of Subsidies

One section of the new agreement on subsidies deals with the countervailing measures which can be taken against subsidized imports. The regulations follow the

lines of the anti-dumping agreement with regard to proof of injury and the procedural regulations. Countervailing measures against subsidies have a different quality than anti-dumping measures, however. Since the granting of subsidies in general involves a lower risk for politicians and bureaucrats than dumping does for companies, which have to bear the costs of their mistakes themselves, subsidies are more likely to involve "predatory" price behaviour. Furthermore, subsidies often make access to the domestic market more difficult. Countermeasures against subsidized imports are, nevertheless, only meaningful if it is possible to distinguish between injurious and non-injurious subsidies.

Art. 16 of Gatt prohibits export subsidies for goods other than primary products, while domestic subsidies, the trade-distorting effects of which can be considerable, are left to the discretion of the Gatt members. The subsidy code of the Tokyo Round has done little to change this.

The agreement negotiated in the Uruguay Round defines subsidies for the first time in Gatt. Only the so-called "specific" subsidies, which favour particular firms or branches and do not apply in general, fall under the auspices of Gatt. The mainstay of the agreement is the differentiation between prohibited, actionable and non-actionable subsidies. Subsidies are prohibited, the granting of which depends upon a particular export behaviour or on the preferential utilization of domestic goods. At the same time this eliminates the foundation for the majority of trade-related investment measures (TRIMs).

Subsidies which can lead to serious injury of the interests of a contracting party are defined as actionable. This is to be suspected, for example, when a subsidy is greater than 5% of the value of a product. In such a case the subsidizing country must, on request, bring evidence that the subsidy in question does not cause serious injury to the plaintiff.

Apart from the subsidies generally available, under certain conditions specific subsidies for the support of industrial research and development activities or of disadvantaged regions as well as certain subsidies for the improvement of environmental protection are non-actionable.

Special rules apply firstly to the developing countries and secondly to aircraft construction and agriculture. Even if it cannot be expected that all competition-distorting subsidies will disappear at one blow, at least narrower limits than before have been placed by the new subsidy agreement on a subsidy race which in the final analysis is to the detriment of all participants.

Technical Barriers to Trade

The complex connection between domestic and external economic aims and instruments can be seen particularly clearly in the technical barriers to trade in the form of diverging norms for products and processes, hygiene standards, testing procedures, conformity controls etc. between the different countries. The WTO agreements on technical barriers to trade and on sanitary and phytosanitary measures[27] attempt to limit the damage to foreign trade which can be caused by such international differences in standards.[28] The WTO members are in principle obliged to develop national regulations on the basis of international standards. This is likely to strengthen already existing tendencies towards internationalization.[29] Central information bureaus in the individual countries, extended obligations regarding notification and a code of good practice for the development of voluntary standards by norm-setting bodies are intended to guarantee increased transparency.

In addition to product standards, norms regarding processes and procedures (e.g. regulations concerning the application of growth hormones, or hygiene in slaughter houses) are covered for the first time by the agreements. This is a field where a number of sharp trade conflicts have broken out in the past. However, there is no mention in the agreements of the mutual recognition of standards. The WTO thus remains far behind the European model of mutual recognition with a minimum degree of harmonization. Together with the new dispute settlement mechanism the agreements could

[27] The latter agreement covers the field of food control as well as protection from animal and plant diseases.

[28] International differences in standards often distort international competition. Losses in welfare resulting from this can be regarded as the price of the (attempted) correction of market failure by means of domestic economic regulations in the case of differing international priorities and circumstances. But they can also be an expression of a protectionist setting of standards which attempts to protect domestic producers from foreign competitors in a disguised fashion or to create advantages for them on international markets.

[29] The vanguard in this seems to be the EU, which favours international standards due to its sobering experiences with harmonization during the pre-internal market period. In the case of electrotechnical standards the overlapping is already about 90%, and for other international standards 40 to 50%; cf. "Uruguay deal boosts world standardisation", in: Financial Times, 4. 2. 1994.

[30] Of the world-wide exports of services in 1992, 16.2% were from the USA, 10.2% from France, 6.5% from Italy and 6.4% from Germany; cf. Gatt Press Release of 30. 3. 1994, pp. 7, 19. The data base is inadequate, however; cf. B. Hoekman and R. Stern: International transactions in services – issues and data availability, in: R. Stern (ed.): The multilateral trading system, Ann Arbor 1992, pp. 400 ff.

nevertheless contribute in particular to combating protectionist misuse of the defining and implementation of standards.

The Inclusion of Services

With a volume of US$ 1,030 bn in 1993, trade in services achieved almost 30% of the volume of trade in goods (US$ 3,580 bn).[30] An even greater expansion was, however, hindered up to now by a multitude of governmental regulations. The fundamental importance of the agreement on trade in services (GATS) is therefore very considerable. But with regard to the opening up of markets the results obtained in the Uruguay Round were only moderate. Some of the steps towards liberalization which had originally been foreseen were withdrawn by the USA and the EU, so that the agreement basically amounts to a framework for further market opening. Market access is regulated by mutual concessions on a most-favoured-nation basis.[31] In line with the basic principle of national treatment, foreign services and service-providers may not be discriminated against; different treatment which has no effect on competition is allowed, however.[32] Most-favoured-nation treatment applies but it can be suspended for ten years under conditions not specified in detail. The application of safeguard measures in cases of need is to be regulated by 1998 and to take into account the principle of non-discrimination.

The agreement includes exceptions to the rule for individual sectors, however:

☐ Foreign suppliers of financial services are to be granted the right of establishment and allowed to introduce new financial services. In selected fields they are to be granted national treatment. The USA is granted exoneration from most-favoured-nation treatment.

☐ All suppliers of telecommunications services from member states are to be granted access to all public networks. Negotiations are, however, still going on over the question of most-favoured-nation treatment for basic telecommunications services.

☐ In the audiovisual sector it proved impossible to achieve agreement on the question of market opening between the EU and the USA, where audiovisual products are the second most important item in non-agricultural exports.

☐ Public tenders are not subject to most-favoured-nation treatment. Preferential treatment of national services and barriers to market entry continue to be allowed. The question of the distortion of trade in services by means of subsidies is also ignored.

The relatively general formulation of the agreement's provisions and the numerous exceptions to the rules leave wide scope for the interpretation of the agreement. The costs and the benefits of barriers to trade in the services sector, which as a rule are non-tariff barriers, can hardly be quantified, so that the weighing of concessions against one another in future negotiation rounds will be difficult. It is to be feared that resorting to exceptions to the rules, along with the annulment of most-favoured-nation treatment in certain sectors, will lead to the insulation of the sectors involved for a long period of time. Similarly, the broad application of national treatment is not to be expected. In order to prevent attempts at liberalization being blocked, the creation of sector-specific codices should be considered, which only apply to the countries which sign them. In the long term these should be transformed into provisions which are binding on all member states.

Intellectual Property Rights

Several international agreements on the protection of intellectual property rights already exist outside of Gatt. Specially worthy of mention are the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, as well as the Washington Treaty on Intellectual Property in Respect of Integrated Circuits. Furthermore, the World Intellectual Property Organisation (WIPO) is an international institution which has already existed for a number of decades, administering most of the international agreements, and whose objective it is to support the world-wide protection of intellectual property by means of intergovernmental cooperation.

The agreement on trade-related aspects of intellectual property (TRIPs) contains regulations which go much further than any of the previous international agreements. Higher standards of protection will apply in future to a majority of intellectual property rights (copyright and related laws, trademarks, geographical indications, industrial designs, patents, topographies of integrated circuits and trade secrets). Most important, however, is that the signatories to the agreement commit themselves to taking the necessary measures internationally and at the border to ensure that the standards are put into effect.

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[31] In areas in which preferences have already been granted limits to the number of service suppliers, the value or number of services or the number of foreign workers necessary to provide certain services, among other things, are not allowed. Market access, national treatment and the recognition of foreign education and examinations, norms and authorizing procedures are to be translated into practice step-by-step via negotiation rounds.

[32] A lax interpretation of this regulation can lead to discrimination.

The industrial countries are granted a transitional period to 1996 to bring their laws into line with the TRIPs provisions. For developing countries and countries which are in transition from a centrally planned economy to a market economy the corresponding deadline is the year 2000. In the least developed countries the transitional period can last until 2006 and under certain conditions an extension is possible. In case of conflict, the integrated dispute settlement mechanism of Gatt is available, which as a final resort can even allow the injured parties to apply cross-sectoral sanctions.

It is largely undisputed that missing or inadequate standards for the protection of intellectual property have a negative effect on the international division of labour and on the transfer of technology. Trade in counterfeit goods weakens competition on quality and represents a danger to the health and security of consumers, so that the application of restrictive standards is urgently necessary in this field. A low level of protection for patents reduces the incentive to invest in research and development. Nevertheless, it must not be ignored that in this case higher standards of protection not only have advantages, but that they also entail costs, particularly for the developing countries, in the form of higher prices. In this field too, however, the gains probably prevail, primarily due to the transfer of technology. As a whole, the agreement is a considerable improvement over the previously existing international agreements.

Decision-making

The World Trade Organization is intended to be the institution responsible for all questions concerning world trade, analogously to the IMF and the World Bank. It replaces the previous, loose system of negotiation rounds by a structure in which regular negotiations take place at different levels[33] and it is responsible for all the agreements which were made within the framework of the Uruguay Round. These agreements must be put into operation by all the WTO members.[34] The establishment of the WTO therefore leads to a considerably extended multilateral disciplining of trade policy; this is no longer restricted to border measures but now intervenes deeply in the domestic economic policies of the member states.

Decisions continue to be based on the principle of consensus. If a consensus cannot be reached, each country has one vote. Exceptions to the rules require a 3/4 majority of the ministerial conference. Until now only a two-thirds majority of the countries present at the Gatt council was necessary. In future, waivers can only be granted for a limited time-period; already existing exceptions end in January 1997. "Perpetual" waivers, which hindered previous steps toward liberalization in important areas, are thus no longer possible.

Certain basic rules, e.g. rules concerning voting and dispute settlement or most-favoured-nation treatment, can only be changed when all countries agree to the change. Changes affecting the rights and obligations of the member states only come into operation when two thirds of the countries have agreed to them and they only apply to these countries. Other changes apply to all countries when two thirds have agreed to them.

Membership applies automatically to the member countries of the "old" Gatt which have ratified the agreement. The admission of new members requires, as in the previous procedure, the agreement of a two-thirds majority in the conference of ministers. At the present time a large number of countries wish to join Gatt, since they assume that in the transitional phase only a few countries will avail themselves of the right to suspend their obligations, which is generally possible upon entry.

A central function of the WTO is the settlement of disputes. An integrated procedure has been established for this, which applies to all the agreements of the Uruguay Round.[35] Trade conflicts are to be solved primarily via negotiations. The states concerned[36] can take recourse voluntarily to mediation and informal dispute settlement procedures. The setting up of a dispute settlement panel can no longer be prevented by countries which are involved; its verdict can only be rejected unanimously. The verdict can, however, be contested before a standing appellate body, the judgement of which should be limited to legal questions and can also only be rejected unanimously. If the country involved does not apply the recommendations set out in the verdict within the period of time laid down, the plaintiff can demand negotiations on appropriate compensation. If these fail, the plaintiff can apply sanctions, which should basically be imposed in the same sector. They can however also be extended to other sectors of the same agreement and, as a last resort, to other agreements ("cross-retaliation").

The new dispute settlement procedure with its well-designed regulations will considerably improve the defence opportunities of small and economically weaker

[33] A ministerial conference takes place at least once every two years.

[34] In contrast to this, the codices agreed in the Tokyo Round only applied to a small number of Gatt members.

[35] If developing countries are involved in a dispute they are to be given preferential treatment.

[36] If a third country has a legitimate trade policy interest in the negotiations it can apply to take part.

countries. The countries affected can no longer evade a verdict by simply ignoring it, such as recently happened in the question of the EU regulation regarding the importing of bananas. The decisive factor here is the upgrading of the dispute settlement panels and the creation of the appellate court. The recommendations and decisions of these neutral bodies are given priority over demands raised unilaterally by powerful trade-policy opponents.

The WTO members are obliged to use the multilateral dispute settlement procedure whenever it is applicable, and the sphere to which it applies is defined widely with the expansion of the multilateral rules to services and to the protection of intellectual property. Trade policy arbitrariness (and the "law of the jungle") is thus forced back and the escalation of trade conflicts is prevented. In principle, therefore, unilateral coercive measures and sanctions such as have often been practised in the past, by the USA for example, should in future be largely impossible. This requires, however, that the WTO members be prepared to subject themselves to the new world trade order.

Bernd Schnatz*

South Africa's Economic Prospects After the Elections

South Africa looks back to half a decade of fundamental changes: apartheid laws have been abolished, sanctions have been lifted and finally at the end of April 1994 the black South African majority was allowed to vote for the first time. How has the political and economic environment to be judged after the election in South Africa? What need for action can be identified for the new South African government to improve the economic prospects of the country?

Following the phased abolition of apartheid in South Africa within the framework of extensive political reforms since the end of the eighties, the international community has lifted the sanctions previously imposed on the country. The South African reforms reached a peak with the elections in April this year, in which the black majority was allowed to participate for the first time in the country's history. The process of liberalization which has taken place in politics must now be followed by the reintegration of South Africa into the world economy. At present the South African economy is, in many sectors, hardly competitive on an international scale, mainly due to the import substitution policies pursued in the last decades. South Africa will scarcely be able to achieve competitiveness on international commodity markets all by itself. Because of extensive interventions in the factor and product markets the country is lacking in appropriate technology and risk capital.

Foreign direct investment, providing both scarce capital and modern technologies, will be essential for accelerating the process of economic reform in South Africa. One important precondition for the involvement of internationally active firms in South Africa is that the administrative barriers to entry for foreign investors are kept as low as possible. In addition, South Africa must be highly attractive as a production location for multinational enterprises in order to beat possible alternative locations in southern Africa, Southeast Asia or Latin America. How far South Africa as a production location will be able to stand up to the international competition for investment funding from the industrial countries must be judged on the basis of a review of the political and economic situation and an assessment of the reform programme of the new government in South Africa.

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