Introduction

Today, the global trade regime is a rules-based political system where the rules flowing from international agreements that seek to promote and stabilize economic exchanges between countries are ranged against the regulations of national governments that often seek to restrict those exchanges. The purpose of the international rules is to reduce the protectionism of national regulations, but even more to reduce the uncertainty and unpredictability of international trade relations, and to promote stability. The task of this chapter will be to show how the global trade regime has been established through the actions of trading countries over the past 150 years, and how it became institutionalized in the World Trade Organization (WTO).

The global trade regime of the late twentieth and early twenty-first centuries is based on three components: trade, national regulations, and international agreements. Trade and national regulations have been a theme and counterpoint throughout much of history, in the sense that when national regulations receded, trade flourished; and when those regulations intensified, trade languished. To this combination can be added the third factor of international agreements, by which countries attempt to establish international rules that would restrict their own (and other countries') capacity to interrupt international trade through national regulation. Rules and regulations appear to be inherent in our highly ordered lives, and the irony is that in order to reduce regulation of one kind, it requires the intercession of rules of another kind. The important issue is where the rules or regulations come from, and whether their purpose is to reduce or expand the scope of our economic activity.

Trade, which is a staple of our modern global political economy, is also a historic and even prehistoric phenomenon. It was important to many ancient and medieval powers. Trade lay at the centre of state revenue and state power in ancient Athens, Ptolemaic Egypt, the Italian city states of Venice, Florence, and Genoa, and the German Hanseatic League. Nowhere was this clearer than in ancient Athens, which developed through commercial activities and at its height was totally dependent on trade. Athens exported silver and olive oil, and the boundaries of its trade have been charted over time by the shards of pottery urns that have been discovered throughout the Mediterranean region. In return, the Athenians were dependent on the import of grain, which was essential to maintain the population of Athens in an arid region.

In examining the global trade regime, trade is by necessity the starting point, but government is equally part of the story. This point has been observed by many writers, but perhaps was expressed most effectively by John Condliffe (1950: 27) as follows: 'The beginnings of trade are to be found in the enterprise of groups and individuals, but regulation and taxation of trade are almost as old as trade itself. In tracking history, if enterprise is the theme, regulation is the counterpoint. As soon as the track begins to be beaten out, established authority intervenes to control and levy tolls upon the traders.'

Early trade was a primitive exercise in economic enterprise. The means of regulating trade were equally primitive. The earliest means were tolls, which were exacted by local leaders for the permission to pass through territory, or to trade, or simply for protection. From the earliest time, tolls were an expression of military control and political sovereignty, and if one controlled territory, one could exact tribute through tolls at will. This resulted in a great hindrance to trade, especially in Europe, which was divided into many small jurisdictions during the Middle Ages.

A more modern method of regulation than tolls was the tariff, or customs duty, which we now recognize as a percentage tax added to the price of imported goods. Tariffs are still with us today, but they are among the oldest functions of government. The purpose of early tariffs, whether on imports or exports, was to raise revenue. Tariffs were effective for this purpose, for by the beginning of the eighteenth century duties on imported goods had come to be the chief source of revenue in European countries. A further function of the tariff was to protect domestic producers from foreign competition.

Today, protectionism is the main purpose of the tariff. The revenue function is less important in developed countries as governments have found other more effective means to raise revenues, although the

tariff is still an important source of revenue in some developing countries. However, as if to demonstrate the ingenuity of government regulators, new forms of protection have arisen which are collectively known as non-tariff measures (NTMs). These measures have now become more important than tariffs, the latter having been greatly reduced (again, mainly between developed countries) by successive trade agreements under the General Agreement on Tariffs and Trade (GATT).

The regulations that have restricted trade in recent decades have been the work of national governments. But those same governments have also reached international agreements with other governments attempting to constrain the extent to which domestic policies would restrict the free flow of international trade. These agreements started as simple undertakings between peoples as to how their commercial relations would be conducted, and trade agreements are almost as old as trade itself. For example, commercial treaties have been discovered between the kings of ancient Egypt and Babylonia giving the parties the right to enact duties on the merchandise of traders or travellers. In more modern times, such treaties have been instrumental in establishing the rules whereby trade could be carried on between different political jurisdictions.

There has been a close relationship between trade and commercial treaties down through history, to the extent that it accounts for much of the diplomatic practice between countries. An important watershed in this relationship occurred in the mid-nineteenth century with the Cobden–Chevalier (or Anglo-French) Treaty of 1860. This treaty initiated a brief period of liberalized trade between the United Kingdom and the Continent, which ended with the world depression of 1873–96. However, the treaty demonstrated that trade agreements could serve as an effective means of trade liberalization by alleviating some of the worst effects of competitive national regulation, and it set the stage for the deployment of trade negotiation in the twentieth century.

Key points

- The international trade regime is based on three components: trade, national regulations, and international agreements.

Historical antecedents: 1860 to 1945

War and depression

The impact of government regulation on trade was well understood by the nineteenth century from the writings of Adam Smith and other political economists. Smith noted that in addition to raising revenue, tariffs also had the effect of protecting domestic producers from foreign competition, something Smith and other reformers generally viewed with disfavour. As a political movement, however, the effort to curtail protectionist regulation did not begin until the Reform Act of 1832 in England. A campaign for free trade had begun among British merchants in the second quarter of the nineteenth century. The campaign was part of a broader effort of political reform in British society, and its eventual success resulted in part from the political realignment introduced by the Reform Act. The campaign was led by Richard Cobden, who demonstrated the importance of pragmatic leadership in promoting the ideal of free trade. In 1848 Britain repealed the Corn Laws, which provided high protection in agricultural products, and followed up this action with a series of administrative and diplomatic measures over the next two decades that put free trade into practice. Meanwhile, on the Continent the French free trade movement had sought to convince the government of Louis Napoleon to reciprocate the British move toward free trade that was initiated by the repeal of the Corn Laws. No action was taken until the opportunity arose to incorporate a tariff negotiation in a commercial and political treaty with Great Britain. The Cobden-Chevalier treaty of 1860 resulted, which later helped to open the French market to British manufacturers (Rosecrance 1986).

The European system enjoyed a brief period of liberal commercial exchange that started in the 1830s and

lasted until the 1870s. This period was economically dominated by Great Britain. The Napoleonic Wars of the early 1800s had left British manufacturing capabilities unscathed, and following the wars Britain's economic strength allowed it to become the leading creditor country in the world. Britain provided aid and loans to European nations and had large exports of foreign investment, mostly to the United States and British colonies in Asia. In sum, the mid-century period of free trade essentially originated in the domestic politics of Great Britain and spread to the nations of Europe through the mechanism of international commercial treaties. The European commitment to free trade was considerably less enduring than the British, and it turned around quickly in the face of depression after 1870. For the British, however, free trade was the principal commercial policy of the nation until well after the First World War.

Protectionism reasserted itself in Europe as a straightforward response to hard times. Owing to a series of rapid technological improvements in the mid-1850s, the comparative advantage in grain growing shifted decisively to the New World, with the result that grain prices fell sharply in European markets. At the same time, a slump occurred in industrial production, which continued for over two decades in the form of low prices and low return on capital for manufactured products. International competition became severe, and in all countries there were strong pressures for protection against imports. One by one, national governments succumbed to the pressures, and reversed the period of relatively free trade that had been established prior to mid-century. Austria-Hungary raised tariffs in 1876, and Italy followed in 1878. In 1879, Germany shifted to a protectionist policy and so, because of its size in the European economy and its philosophy of nationalism and mercantilism, set a protectionist tone for the overall system. France responded to German protectionism with restrictions of its own, and for its part, the United States continued the protectionism it had pursued throughout the nineteenth century. The United Kingdom, the Low Countries, and Switzerland, however, resisted the move toward higher tariffs, but by the end of the century, the UK was the only major nation practising free trade (Kindleberger 1951).

The depression that began in the 1870s also ushered in a lengthy period of protectionism that never really turned around until after the Second World War. In the early part of the twentieth century, growing nationalism, and then war in 1914, exacerbated the protectionist trend that was already well established in response to the economic conditions of the late 1800s. The war broke up an imperfect but workable equilibrium between internal economic policies, trade, and payments that had existed under the gold standard of the nineteenth century. The war produced enormous dislocation that was even more serious in economic terms than the destruction that had occurred. The results were maladjustments to the free flow of labour, capital, and goods, which created impediments to economic activity that lasted well into the 1920s. But continued war planning also played an important role in the European mentality after 1919. In the realm of economic policy, war planning took the form of mercantilism, and later a bilateralism (that is, a focus on negotiating agreements with individual trade partners rather than through an international organization) inspired by Nazi Germany but copied by many other countries. Both mercantilism and bilateralism were designed to place the interests of the nation ahead of the wider community, and they inevitably took their toll on the economic performance of the overall system. The practice of both mercantilism and bilateralism, like war itself, was an expression of nationalism in economic policy.

The breakdown of the international economic system from war undoubtedly deepened the depression within national economies, and nations made efforts at the international level to repair the damage. Two such efforts stand out. The first was the World Economic Conference of 1927, and the associated Conference on Import and Export Prohibitions and Restrictions (Shonfield 1976). These meetings were aimed at countering the trend toward increased tariffs that was occurring in all countries during the 1920s. Countries initially agreed on a tariff truce and an agreement that would regulate quotas and other restrictions. However, the agreement failed to receive sufficient signatures to become binding, and the tariff truce was later discarded by individual country actions. The second effort was the World Economic Conference of 1933, at which time countries tried to achieve an international currency-stabilization agreement amid wildly fluctuating exchange rates

that were perceived to cause significant disruptions to international trade. This plan failed to attract the Americans, and in the wake of the collapsed conference countries engaged in a period of competitive exchange-rate devaluations through the mid-1930s.

Reciprocal Trade Agreements Act of 1934

The United States had emerged from the First World War as the largest trading nation in the world; hence it was likely that domestic events affecting US trade capabilities would have a wide impact on commercial relations in the international system. This was the case with two events of the early 1930s: the Smoot–Hawley tariff of 1930, and the Reciprocal Trade Agreements Act of 1934 (Tasca 1938). The former was the culmination of a trend toward protectionism that had begun in the late nineteenth century. The latter was the beginning of a trend toward liberalism which was interrupted by the Second World War but then continued into the present. These two events were major watersheds in commercial policy, and probably more important than the Second World War because they were economic events originating in the world economic system, rather than being the economic results of upheaval in the international political system.

The Smoot–Hawley Act of 1930 raised US duties to historic levels and increased the scope of tariff coverage as well. The Act was not a dramatic turnabout in protectionism, since US tariffs were already high and all major trading nations were protectionist at that time. Rather, it represented a new level in the long movement by nations toward closing off their economies to foreign imports. In the wake of the Smoot–Hawley tariff and the retaliation by foreign countries that it precipitated, world trade fell by about two-thirds by the mid-1930s. The breakdown of trade after 1930 was alarming to Western governments, but even more alarming was the process that had led to that breakdown. The Smoot–Hawley Act was written by congressional committees that were essentially unable to master the detail that had become inherent in any major tariff legislation. Because of this economic illiteracy, and because of the general sympathy toward protectionism that had been created by the depression, Congress essentially extended protection to all those groups that demanded it. The spectacle was that of a gross excess of the democratic process and a loss of control over the economy by both the US president and the congressional leadership.

The breakdown of trade took its toll on public sympathy toward protectionism. The tariff became an issue in the presidential election of 1932, and was attacked by Democratic candidate Franklin D. Roosevelt as contributing to the depression. Following his election, Roosevelt appointed Cordell Hull as Secretary of State, a man who was committed to the view that free trade was an essential ingredient in world prosperity and an even more important ingredient in international peace and stability. Hull and his officials began working with Congress to prepare new tariff legislation, and two years later the legislation was enacted under the title Reciprocal Trade Agreements Act (RTAA) of 1934.

The RTAA produced a revolution in US and even international trade policy. The central element of the RTAA was that it empowered the president to lower (or raise) tariffs up to 50 per cent from Smoot–Hawley levels in the course of trade negotiations with other countries. From the standpoint of American politics, the RTAA transferred tariff-setting policy to the presidency, which could organize itself bureaucratically for the task, and away from the Congress, which had ultimately proven incapable of managing the tariff or of discriminating between the many appeals brought by constituents for protection. This transfer substantially increased the control the government exercised over trade policy, and it has been an essential part of the US trade policy structure ever since 1934. From the standpoint of international politics, the RTAA was revolutionary in that it implicitly accepted that setting tariff rates could no longer be exclusively a unilateral policy by a nation state, but was rather a bilateral matter to be settled through negotiation. This action was reminiscent of the efforts by Michel Chevalier in the previous century to use commercial and political negotiation to reduce trade restrictions between France and Britain, and it commenced the changeover from a protectionist trade policy that had existed since the 1870s.

The US government pursued reciprocal trade agreements with other countries as far as economic circumstances after 1934 would allow. By 1939, the United States had concluded twenty-one agreements

Box 4.1 Most-favoured-nation principle (MFN)

The most-favoured-nation principle was introduced into the trade agreements of the 1930s and was incorporated as Article I of the General Agreement on Tariffs and Trade in 1947. It required GATT Contracting Parties to extend to all signatories the benefits of any agreement that it might reach with any other country (that is, the 'most favoured nation') in the GATT. The GATT provided a forum, and a legal regime, within which countries were encouraged to negotiate and to reach agreements to lower tariffs on a reciprocal basis. Normally a country (for example, Great Britain) would conclude such an agreement on a bilateral basis with the principal supplier of a good (for example, an agreement with Canada to lower the tariff on winter boots), but the resulting lowered tariff would be accorded to all countries exporting winter boots to Great Britain. In this example, it would be assumed that Canada might reciprocate by lowering its tariff on another good on which Great Britain was the principal supplier to Canada.

The effect of the MFN principle was to eliminate discrimination between trade partners, for countries in principle were obliged to have one MFN tariff that applied to all other countries, and therefore were prohibited from applying different tariffs on the same product coming from different countries. Non-discrimination introduced the problem of 'free riding' where a country might take unreciprocated benefits from a lowering of tariffs by other countries, but this was regarded as a lesser problem than that caused by overtly discriminatory tariff policies. The overall purpose of MFN and non-discrimination was to create a unified multilateral trading system, and to prevent the international trade system from degenerating into a balkanized system of regional preferences.

which made reductions in about a thousand duties. All agreements were made on a most-favoured-nation (MFN) or non-discriminatory basis, which slowed the negotiation because it engaged more parties, but also for the same reason extended more widely the impact of the agreements. The RTAA agreements were successful in increasing the flow of international trade, but the greatest value of the programme was that it provided a corpus of experience in trade liberalization that became integrated after the Second World War. The act of reaching bilateral agreements gave governments the opportunity to create mechanisms for liberalizing trade, which was demonstrated by the fact that most of the GATT articles drawn up in 1947 were taken from various agreements reached during the previous decade under the RTAA system. For example, the escape clause that became written into Article XIX of the GATT was drawn from an agreement the United States reached with Mexico in 1942.

The reciprocal trade programme was concurrent with a sea change in US and world public opinion regarding protectionism and free trade. In 1930, the passage of the Smoot–Hawley tariff took place in an environment favourable to protectionism, and within a legislative system that encouraged protectionist pressure groups to press their demands vigorously. This can be contrasted with the climate that existed in 1953–4 when the Republican Party under Dwight Eisenhower reversed its historic policy of protectionism by extending the RTAA of 1934. In the second case, public opinion was much more supportive of free trade, and there was relatively little effective protectionist pressure on the legislators, particularly from the more important economic interest *groups* in the country (Bauer, Pool, and Dexter 1972). What appeared to have changed, not only in the United States but also elsewhere, was the principle of free trade versus protectionism, or more precisely, the expectations that people held as to which principle was just and would ordinarily prevail as a general rule. This change created a more favourable economic context for the major changes in the world trade regime that occurred after the Second World War.

Key points

- Organized efforts to establish freer trade in Europe began in the middle of the nineteenth century.
- A lengthy period of protectionism was initiated by the world depression that began in the 1870s, and then continued as a result of the world wars and depression of the first half of the twentieth century.
- Efforts to establish a liberal international trading system were begun with the US Reciprocal Trade Agreements Act of 1934.

The ITO and the GATT: 1947 to 1948

Post-war economic situation

The ascendancy of the United States in the early post-war period was immediately evident in the play of international policy making. In terms of security policy, the United States took over the leadership of the Western alliance. The United States enjoyed a preponderant position in the formation of the United Nations and other post-war international organizations. Reconstruction aid to Europe through the Marshall Plan further demonstrated the primacy of the United States in the Western system. In addition, US economic hegemony could be demonstrated by figures representing three important areas of the international economic system, namely international monetary payments, trade, and foreign investment. In 1947, the United States held about 70 per cent of the monetary gold stock of the world. Even a decade later, this figure had not dropped below 59 per cent of the world's stock (Cooper 1968). There was an acute shortage of US dollars over this period, and the dollar itself began to serve as a reserve currency for international payments. Regarding trade, by 1950 the United States accounted for nearly 17 per cent of world trade, and its share was about one and one-half times the share of Great Britain, the next leading nation (Krasner 1976). Through the decade of the 1950s the United States increased its preponderance in world trade. By 1960, US trade was 20 per cent of overall world trade, over twice as large as that of the next leading nation (Great Britain), and roughly equal to the combined total of the three leading European economies, namely Great Britain, France, and West Germany. Finally, with regard to foreign investment, the United States went from an initial accumulated stock of foreign investment of $7 billion in 1946 to over $100 billion in 1973. The latter figure represented 51 per cent of total world foreign investment in that year (*Transnational Corporations* 1978). The second ranking nation in foreign investment in 1973 was the United Kingdom with 13.5 per cent, or about one-quarter of the US total. In sum, all of the major indicators of international economic performance demonstrate that the United States was in a unique position of leadership in the first two decades of the post-war period.

United States leadership rested relatively easily on other Western nations because the security concerns of the Cold War with the Soviets encouraged those nations to be more willing to follow than they might otherwise have been. However, any system in which one nation is dominant is likely to reflect the values of that nation, which was the case of the trade regime set up under the GATT after 1947. One American value that was carried forward to the international system was a relatively liberal pro-business anti-government approach to international trade, which to the Europeans was problematic due to the uncertain circumstances facing European economies after the war and their emphasis on maintaining low levels of unemployment. For the Americans, however, trade liberalization was an attractive goal in ideological terms, and it was also consistent with US national interest, since the United States was favourably positioned to benefit from freer trade.

A second American value was that of multilateralism, which was intended to guarantee non-discrimination between all countries participating in the trade regime. The Americans blamed the 'closed' imperial trading blocs the Europeans created in the inter-war years for the collapse of international trade in that period, and saw in multilateralism a means to remove trade restrictions. However, the Europeans were much more guarded, fearing that their weaker economies would be unable to withstand the strain of multilateral trade liberalization. In the place of multilateralism, the Europeans promoted the virtues of regionalism, which later came to fruition in the forming of the institutions that led to the present-day European Union (EU). Yet another American value was a legal approach to international trade relations, complete with the conception of a code of international trade law backed up by a mechanism for settling disputes between parties. For their part the Europeans were wary of a code approach to international trade relations and sought instead to preserve their right to administrative discretion. They preferred to build a post-war trading system on

practice rather than formal legal commitments (Gardner 1969).

The result of the different approaches taken by the United States and its allies is that the trade regime was and has always been based on compromise in the face of policy disagreements. Because of its predominant position, the US approach prevailed in the main on most issues, but the rules that were negotiated were often riven with exceptions that weakened the legitimacy and effectiveness of the regime. It is important when assessing the trade regime to recall that it has always been based on a negotiated consensus, and that in the real world consensus is often only achieved through compromises that are unpalatable to the purists.

The rules of GATT

Led by the United States, the Second World War allies attempted to create a new structure for the international system following the war. An essential part of this attempt was the Bretton Woods Conference of 1944, which established the International Bank for Reconstruction and Development (World Bank) and the International Monetary Fund (IMF). Along with these efforts in the development and monetary fields, the allies met in several conferences to establish the architecture of an international trade regime. To that end, countries concluded and signed an agreement to establish an International Trade Organization (ITO) in 1948, which was to complete the triad of functional organizations in the area of international economic relations. However, the US Congress failed to ratify the agreement, and without US involvement the ITO would have been irrelevant. In place of the ITO, countries relied on the General Agreement on Tariffs and Trade (GATT), which had been established in 1947, to provide structure for the rapidly expanding trade system. The GATT itself was simply a contract embodying trade rules that were negotiated during a multilateral tariff negotiation in 1947. The GATT rules were partly a mechanism to ensure that countries that reduced protection by lowering tariffs did not reinstitute that protection through other measures. The GATT was never intended to function as an international organization. The fact that the GATT came to look and function like an international organization is the result of a largely unplanned and incremental accretion of political and legal powers. It was institution building by accident.

The GATT rules are contained in the thirty-five articles of the General Agreement (Jackson 1969). Perhaps the most important rule was that of non-discrimination, which is found in Articles I and III of the GATT. Article I is known as most-favoured-nation principle (Box 4.1). It required that any advantage—such as a lowered tariff—granted to another contracting party would be immediately accorded to all other contracting parties. This obligation attacked the practice of bilateral tariff preferences, which were commonly employed for political reasons prior to the Second World War, and which compartmentalized and therefore reduced the flow of trade between nations. Another aspect of non-discrimination was found in Article III, which obliged nations to treat foreign products—once they had been imported and duty paid—no less favourably than domestic products in respect to taxes and other requirements. In general, Article I ensured a country could not discriminate externally, and Article III ensured it could not discriminate internally.

The principles of external and internal non-discrimination were not easy to establish in international trade. For example, in the 1930s Article I non-discrimination, or most-favoured-nation treatment, would have required a country like Great Britain to give another country (even Nazi Germany) that did not discriminate against British trade the same tariff preferences it might have negotiated with a third country. This principle had the effect of elevating economics over politics in international relations, and it was the subject of internal debate in Western countries in the years leading up to the Second World War. Similarly, Article III non-discrimination was also difficult for nations to accept because it removed a whole range of policy tools (such as internal taxes or distribution requirements) that governments traditionally used to extend preferential treatment to domestic products.

Non-discrimination continues to be the cornerstone of the international trade system. Article I remains a basic building block of the GATT, and even though it has been somewhat compromised by preferential free trade agreements, nations negotiating those agreements have been careful to ensure that preference arrangements did not introduce new protectionism into the broader system. As for Article III,

its relevance is demonstrated by the frequency with which it has been tested in GATT and now World Trade Organization dispute settlement panels. An early example is the 1988 case on Canadian Liquor Board practices, where a panel found that discriminatory mark-up and listing practices by Canadian provincial liquor boards were inconsistent with Canada's obligations to its trading partners under Article III. This decision created pressure for reform of the Canadian practices.

A second important GATT rule was the prohibition in Article XI against quantitative and other non-tariff restrictions to trade (Dam 1970). The theory of the GATT was to delegitimize the use of protectionist measures other than tariffs, hence Article XI contained the stark obligation that 'no restrictions other than duties (that is, tariffs)' shall be maintained on the importation of any product. Article XI is increasingly regarded by trade lawyers as a key constraint on governments. For example, confrontations between trade and environmental concerns are a staple of contemporary trade policy, and Article XI obligations are the crux of this debate, as was illustrated in a 1991 GATT panel decision on tuna. At issue was environmental legislation in the United States which prevented the sale of tuna caught by methods that also kill dolphins, which served as the rationale for a ban on imports of tuna from Mexico. The United States lost the case when the GATT panel determined that the US restrictions violated that nation's obligations to Mexico under Article XI.

A third GATT rule deals with the methodology adopted by the GATT for reducing trade restrictions. This methodology was the sponsorship from time to time of tariff negotiations to be conducted 'on a reciprocal and mutually advantageous basis' and 'directed to the substantial reduction of tariffs' (Article XXVIII bis). The concept of reciprocity is the most interesting aspect of this methodology. Reciprocity can be seen as a normal aspect of negotiation in general, which in international trade has been promoted as a political imperative where nations give tariff reductions in order to get similar benefits from their partners, although economists often deride this concept arguing that it is countries offering tariff reductions that make their economies more efficient and hence realize the benefit. Nevertheless, in the GATT's early history of trade negotiations reciprocity was a guiding beacon as countries began the process of dismantling tariff protectionism. However, reciprocity as a concept ran into difficulties when developing countries acceded to the GATT. Because it is questionable whether equal treatment of unequal partners in trade negotiations could be considered reciprocal, numerous exceptions from full reciprocity were granted by industrialized GATT partners in favour of developing countries. For example, in various negotiations an attempt was made to mitigate the obligations of GATT membership for developing countries through the concept of 'special and differential treatment'. In the end, the efforts to water down GATT reciprocity for developing countries have produced fairly little in concrete terms, which demonstrates how difficult it is in international trade to depart from the notion of 'equal treatment under the law'. Nevertheless, demands for special treatment are a continuing aspect of the trade regime, as evidenced in the Doha trade negotiations discussed later in this chapter.

Two other basic norms of the GATT are safeguards and the concept of 'commercial considerations'. Safeguards were based on the operational plan of the GATT framers that restrictive measures on trade would be converted to tariff protection, and then tariffs would be reduced through multilateral negotiations. In a situation where tariff reductions created an especially difficult political problem in any contracting party, the GATT also allowed (in Article XIX) for nations to backtrack on their commitments (that is, to raise tariffs) for a period of time to permit orderly adjustment of domestic markets. The intent was to ensure that problems in specific industries did not compromise the general process of liberalization. The fact that the GATT has accommodated itself to protectionist pressures over the years has often been viewed positively by governments and commentators as an example of pragmatism and resilience.

The other rule of 'commercial considerations', or support for the values of the free market versus government interventionism, is implicit in the entire framework of the GATT. The term is mentioned specifically in Article XVII, where state-controlled enterprises are enjoined to act according to 'commercial considerations', and it is implicit in Article XVI, where the harmful effect of subsidies on efficient production is mentioned. Because the GATT represents commercial, free market values, it has been a successful organization in a world that has recently moved in the same direction, and that continues to

move in that direction following the dissolution of international communism in the early 1990s.

In sum, the rules of the GATT provided a basis for governance in a narrow, but fundamentally important sector of international relations. In any regime, or even government, the test of the regime is that the rules are understood and that they guide behaviour. Without doubt, the rules of the GATT were known in the main, and they were usually followed by the contracting parties to the Agreement (Hudec 1975).

Key points

- Following the Second World War, the United States was a preponderant presence in the world economy, and took a leadership role in post-war planning.
- Trading nations established the General Agreement on Tariffs and Trade (GATT) in 1947, and attempted in 1948 to create an International Trade Organization (ITO), which failed to receive ratification by the US Congress.
- The GATT obliged importing countries not to discriminate in favour of products coming from one country over another, or in favour of domestic products over foreign products, once the latter had paid any duties required and entered the importing country.
- The principles and rules of the GATT provided a rudimentary basis for the regulation of international trade.

Multilateral trade negotiations: 1950s to 1980s

Post-war negotiations and the Kennedy Round

The main role of the GATT was to liberalize trade, and most decisions to that end were initiated in trade negotiations. The GATT was established to support the trade negotiations in 1947, and following that date the GATT sponsored multilateral negotiations in 1949 (Annecy), 1951 (Torquay), 1956 (Geneva), 1960–1 (the Dillon Round), and in 1963–7 (the Kennedy Round). Further negotiations were the Tokyo Round (1973–9), the Uruguay Round (1986–93), and the WTO Doha 'Round', which was initiated in January 2002, and continues at this writing. Of these nine negotiations in total, the first four after 1947 took up some important institutional matters, such as the accession of new members, but they did not make significant progress in liberalizing trade. One reason is that the European countries relied heavily on non-tariff measures through the mid-1950s and hence any tariff concessions given during GATT negotiations were not meaningful in trade terms. Furthermore, European recovery from the war did not occur as quickly as expected, as evidenced by the fact that European currencies were not made fully convertible until 1958, which made it difficult for these countries to increase their exposure to international competition. In practice, the United States was the preponderant actor in the early negotiations and offered most of the tariff concessions.

The GATT incorporated the bilateral negotiation process established by the RTAA, and simply multilateralized it (Diebold 1952). However, this change was not accomplished in one stroke. The early GATT tariff negotiations were multilateral in name, but in fact the real action occurred bilaterally between nations that served as principal suppliers and principal consumers of each other's products. Bilateral agreements were then multilateralized automatically through the most-favoured-nation principle. If a country were to, say, halve its tariff of 10 per cent on Country A's widgets following bilateral negotiations with A, it would be obliged to extend the new tariff of 5 per cent on all imports of widgets from any other GATT contracting party. Nations could, and often did, remain aloof from the bilateral negotiating process, while nevertheless taking advantage—as free riders—of reductions concluded by other nations. Over time, the emphasis in the GATT shifted from the negotiation of tariff reductions to the negotiation of

legal codes of behaviour. The latter negotiations are more fully multilateral, and are carried out in a process reminiscent of domestic parliamentary legislation, with a structured committee process leading to decisions in broader forums.

The Kennedy Round of 1963–7 emerged as the first significant negotiation in GATT after the initial negotiation in 1947 (Preeg 1970). It led to an average tariff reduction among the participants of about 35 per cent, in sharp contrast to the reduction of less than 10 per cent on a much smaller volume of trade in the Dillon Round that preceded it, or even the 20 per cent reduction achieved in the negotiation of 1947. The negotiation also produced an anti-dumping code designed to help standardize national policies in this difficult and contentious area, and as well an international grain agreement that established price ranges for wheat and provided for multilateral sharing of food aid to developing countries. The Kennedy Round was, moreover, the first GATT negotiation at which the nations of the European Community (EC) participated as a single unit, which was the first time Europe and America engaged in a major negotiation across the Atlantic on an apparent basis of equality and reciprocity. It is interesting to note the historical correlation between a successful outcome in trade negotiation and the increasing equality of the major actors in those negotiations, for it is a trend that continued through the Kennedy Round and on into the Tokyo Round of the 1970s.

Apart from the economic results of the Kennedy Round, there were important political results that flowed from the successful completion of this major negotiation. The negotiation of trade liberalization in GATT was always a continuing struggle between liberalizing and protectionist forces. Those governments favouring liberalization have used negotiation, especially multilateral negotiation, as the principal means to free trade from protectionist restrictions. Those favouring protectionism have been more ascendant, and more effective, between major trade negotiations. This increased the salience and importance of any given negotiation over time because there would be an increasing number of policy issues riding on the outcome. Thus, the pressure at the Kennedy Round to reach an acceptable settlement was increased, and ensured that any deadlock would constitute a failure that would go beyond the issues at the table.

Box 4.2 Dumping and anti-dumping duties

Dumping in international trade is generally understood as selling a product into another country less than it sells for in the exporting country. Dumping is more precisely defined in Article VI of the GATT as exporting below the 'normal value' of a product, meaning the price the product would fetch in the exporter's market, or alternatively the costs of producing the product. Dumping is 'condemned' by the GATT if it causes injury to a domestic industry producing a 'like product' in the importing country. In the event a product is dumped and causes injury, as determined by an anti-dumping investigation conducted by the government of the importing country, the importing country can impose an 'anti-dumping duty' (that is, an additional tariff) equal to the margin of dumping, that is, the difference between the normal value of the product and its export price.

In plain terms, dumping amounts to underselling, which is acceptable competitive behaviour within countries, but which in the politically sensitive terrain of international commerce is generally considered objectionable. Anti-dumping actions are widely sought after by import-competing industries as a convenient means of protection against foreign competitors, especially since trade laws in most countries make it relatively easy to establish a case against foreign dumping. As a result, there has been a sharp increase in the incidence of anti-dumping actions by GATT and WTO Members since the 1980s. However, anti-dumping duties themselves can be viewed as a harassing and objectionable impediment on legitimate trade, and consequently countries have negotiated Anti-Dumping Codes in the Kennedy, Tokyo, and Uruguay Rounds designed to discipline the actions governments can take to protect domestic industries from foreign dumping. To sum up, national legislation and international treaties on dumping and anti-dumping duties can be traced back to the beginning of the twentieth century, and these practices have been perhaps the most highly litigious and politicized area of the trade regime since its inception.

The upshot was that the Kennedy Round took on enormous importance as a symbol as it went along. It became a test of the national will of the major participants to continue the post-war trend toward trade liberalization. Even more important, it was a test of the willingness of nations to avoid a breakdown that would lead to increased protectionism. The main reason the Kennedy Round succeeded is that governments feared what the implications of failure might mean for the international economic system, and because they wanted to avoid blame for causing such implications. In a strict sense, of course, it is clear that a deadlock in the Kennedy Round would have meant only that nations did not agree to reduce tariffs or other restrictions; this would have had no necessary consequences for increased protectionism. However, the situation did not get framed in such terms. The political reality was that nations felt under great pressure to avoid a breakdown of a dialogue that had extended for five years and of a settlement that would help structure trading relations in the foreseeable future. Among these general concerns, the positions delegations took on individual tariffs or products ultimately became less important. Thus the main political result of the Kennedy Round was the achievement of the agreement itself, especially since the agreement was significant in trade terms.

Tokyo Round

At the close of the Kennedy Round in 1967, the GATT secretariat led by Director-General Sir Eric Wyndham-White sought to convince the major trading nations to extend liberalization into the area of non-tariff barriers to trade (NTBs) (Evans 1971). This early effort was unsuccessful, but by the early 1970s chaos in the international monetary system and increasing use of non-tariff barriers in response to the surge of exports from Japan and the newly industrializing economies (NIEs) resurrected fears of trade protectionism and convinced national governments to commence a new negotiation in the GATT. This negotiation, named after the city in which it was initiated, started slowly because of the need to gather and classify enormous amounts of trade data respecting NTBs. The negotiation was further delayed by the need for the United States to pass legislation authorizing the president to negotiate, an event which was not completed until January 1975, and as well by the US election of 1976. The negotiation effectively got under way in 1977, and comprehensive offers from delegations were in place by early 1978. Serious bargaining took place during the following year, and in April of 1979 the final agreements were signed, subject to later ratification.

The agreements reached at the Tokyo Round were the most comprehensive and far-reaching results achieved in trade negotiations since the creation of the GATT in 1947 (Winham 1986). The results fell in three categories: six legal codes (plus a sectoral code for trade in aircraft) that dealt with NTBs; tariff reductions; and a series of revisions of GATT articles primarily of interest to developing countries. The six codes updated and expanded aspects of the trade law of the GATT, and were the most important part of the Tokyo Round accords. These covered respectively customs valuation procedures, import licensing, technical standards for products, subsidies and countervailing duty measures, government procurement, and anti-dumping duty procedures. However, negotiations on a safeguards code failed.

The general thrust of the code negotiations was to effect a 'constitutional reform' of GATT law, and as well to improve the openness, certainty, and non-arbitrariness of the rules governing international trade. In some areas this was accomplished without appreciable controversy. In codes on customs valuation, import licensing, and technical barriers, nations proceeded from the widely shared philosophy that government regulations in those areas should not be used to provide protection for domestic producers, either through design or otherwise. In other areas, agreement was more problematic. The attempted code on Article XIX safeguards encountered a determined insistence by the European Commission on the right to apply safeguards selectively on a targeted basis, rather than non-discriminatorily or across the board. Selectivity was especially resisted by the developing countries, which would be the primary targets of this tactic. Also, the code on subsidies and countervailing duties triggered deeply held disagreements between the United States and the Commission over the appropriateness of agricultural export subsidies in modern government practice, but in the end this disagreement was reconciled by limiting the actions taken on agriculture and the code was signed.

The second category of results from the Tokyo Round was tariff reductions. To put these results in perspective, tariff negotiations were the main item of business in the six multilateral negotiations that were held under GATT auspices through the Kennedy Round of 1967. Tariffs were not the major focus of the Tokyo Round, yet the average reductions of about 35 per cent of industrial nations' tariffs achieved in this negotiation were very comparable to the reductions of the Kennedy Round. The reductions covered more than $100 billion of imports, and were phased in over an eight-year period which began in 1980 (Cline 1983).

A major controversy in the tariff negotiation was to arrive at a tariff-cutting formula for manufactured products. A similar controversy had occurred in the Kennedy Round, at which time nations settled on a linear approach (50 per cent cut across the board, less exceptions) supported mainly by the United States. In the Tokyo Round, proponents of a tariff-harmonizing formula carried the day, and nations agreed to table offers according to a compromise 'Swiss' formula that generally required tariff cuts to be proportional to the size of the tariff. The final bargaining produced a number of exceptions to the general formula, particularly in industries where imports were already high and 'sensitive' domestic interests were threatened. For example, in the United States, where the average tariff cut was 31 per cent, the duties for leather imports were reduced by only 4 per cent; for apparel, 15 per cent; for automobiles, 16 per cent; and tariffs for footwear and colour televisions were exempted from any cuts whatsoever. Similar exceptions were made by other trading nations as well.

The third category of Tokyo Round results was a proposed series of revisions to GATT Articles known as the 'framework' agreements. Negotiations on this subject were initiated by Brazil, and were intended to clarify GATT obligations and ease those obligations for developing countries. The framework agreements covered subjects such as safeguard actions for development purposes (or infant industry measures), trade measures taken to correct payments deficits, export controls, and deviations from most-favoured-nation procedures for developing countries. One important accord in the framework package was the Understanding regarding Notification, Consultation, Dispute Settlement, and Surveillance, which required GATT members to notify trading partners of the trade measures they adopt, and thus to provide early warning for all countries of actions that might adversely affect their interests. The framework agreements did not substantially rewrite GATT law to advantage developing countries, and as a result many of those countries felt the results were 'frustrating and incomplete' (*Multilateral Trade* 1979: 34). However, the agreements did improve GATT language on matters related to developing countries, and therefore probably improved the capacity of the GATT legal machinery to mediate and reduce trade disputes.

The Tokyo Round underscored the extent to which multilateral negotiation had become a point of departure for managing the international trade system. In contrast with past GATT negotiations, which were largely limited to the reduction of tariffs, the Tokyo Round was a rule-making exercise of major proportions. Furthermore, the agreements of the Tokyo Round constituted legal rules that reached further into the nation state and impacted more deeply on individual human behaviour than usually occurred with most international agreements. The process of negotiating these rules was extraordinarily complex, and arguably the code negotiations of the Tokyo Round were the most advanced, in terms of bureaucratic complexity, of any multilateral negotiations occurring at that time. The greatest complexity lay in attempting to integrate the conflicting trade legislation of many nations into a coordinated set of international rules. In their efforts to mesh the rule-making apparatus of different countries into a single structure, the Tokyo Round negotiators faced problems that became commonplace a decade later as nations coped with the implications of an increasingly interdependent world.

Key points

- Multilateral trade negotiations were conducted in the GATT to reduce tariff protectionism on a reciprocal basis.
- In the Tokyo Round (1973–9), countries focused on the more difficult task of reducing non-tariff measures that afforded protection in international trade. These measures were regulated through the negotiation of international codes of behaviour.
- The Tokyo Round demonstrated the importance of multilateral negotiation to the management of the international trade system.

The Uruguay Round and the WTO: 1986 to 1994

Background

The next major effort to further establish the world trade regime was the Uruguay Round negotiation, which was launched at a GATT ministerial meeting in Punta del Este, Uruguay, in September 1986 (Croome 1995). The path to the Uruguay Round was difficult indeed. The previous GATT multilateral negotiation had made considerable progress in reducing protectionism from non-tariff barriers. Pressure began to build shortly after 1979 to expand the GATT regime to include new issues, such as services, investment, and intellectual property, in addition to the old issues which dealt with trade in goods. Especially the United States argued that a new negotiation was necessary to make the GATT relevant to a changing world economy, and in 1982 a GATT ministerial meeting was convened to consider this possibility. The idea met sharp resistance, particularly from developing countries that were overwhelmed by the global debt crisis and mainly concerned to expand traditional exports to developed countries to service debt obligations to the International Monetary Fund, Western governments, and private banks. Led by India and Brazil, the developing countries insisted that they were not sufficiently developed to negotiate the new issues such as services, on an equal footing with the developed countries. Moreover, developing countries held that the developed countries had evaded their obligations in some of the traditional goods, such as textiles or agricultural products, which were of particular importance to developing countries, and they demanded further liberalization in these areas as a precondition to any new negotiations. The result was that the 1982 ministerial meeting was a failure for the proponents of new negotiations, although the meeting did establish important work programmes that generated the data needed for future negotiation.

The most dramatic part of the lead-up to the Uruguay Round negotiation came in the week-long special ministerial session at Punta del Este in September 1986 (Winham 1998a). At the eleventh hour, it was agreed between the Americans and the Indians that the session would launch negotiations on a range of issues, including services, but that negotiations on services would be undertaken in a separate structure from those on goods, which presumably would lessen the prospects that developed countries could force trade-offs between services and the traditional subjects in the negotiation. Once the breakthrough on services occurred, it was clear that the remaining issues were not worth holding up the prospect for a new negotiation, and settlement quickly followed on investment and intellectual property, which had also been major sticking points between the developed and developing countries.

New issues

The agenda of the Uruguay Round comprised fifteen negotiating groups arranged initially in four principal categories: market access (including the critical areas of agriculture and textiles); reform of GATT rules; measures to strengthen the GATT as an institution; and the new issues, specifically services, investment, and intellectual property (Preeg 1995). The new issues were included in the negotiation in order to make the GATT more relevant to the developments occurring in the world economy. By the late 1980s, services had come to account for well over half of the Gross Domestic Product of developed countries, and they were beginning to account for an increasing proportion of international trade. For the GATT, the incorporation of services was not a straightforward matter. Services are not goods, which had always been the focus of GATT rules, but rather are processes in which skills and knowledge are exchanged in order to meet a particular consumer need. They can include processes as widely differentiated as engineering consulting, financial intermediation, tourism, or legal advice. Services often require the movement of the factors of production (for example, the establishment of a bank branch on a foreign country to sell financial services), a condition which is constantly affected by changes in technology that decrease the barrier separating non-traded from traded services. For its part, the GATT had identified many services as 'non-traded goods', although this

Box 4.3 Uruguay Round Agreements

The GATT Multilateral Trade Negotiation known as the Uruguay Round began in September 1986, effectively concluded in December 1993, and formally concluded with official signatures at the Marrakesh (Morocco) Ministerial Meeting in April 1994. The Uruguay Round produced a wide range of agreements integrated under a common legal system. What is usually thought of as the 'WTO system' is contained in the Marrakesh Agreement Establishing the World Trade Organization and the Dispute Settlement Understanding. The WTO Agreement established the WTO as an international organization, and ensured that all the agreements negotiated at the Uruguay Round were accepted as a single undertaking, thus increasing the legal integration of the WTO trade regime. The dispute settlement system established by the DSU was also intended to apply to all areas of the Uruguay Round Agreements, hence it is an integral part of the architecture of the new WTO system.

The Uruguay Round Agreements comprise about sixty agreements totalling some 550 pages, covering subjects as widely diversified as agriculture, safeguards, trade in intellectual property, rules of origin, textiles and clothing, and technical barriers to trade. These agreements can be accessed on the WTO website www.wto.org under the title 'Legal Texts of the WTO Agreements'. In addition, the Uruguay Round Agreements also included the General Agreement on Tariffs and Trade 1994, which effectively incorporated the GATT of 1947 into the WTO system. There were some additional agreements interpreting various provisions of the GATT, such as the meaning of 'other duties and charges' in Article II which covers tariff schedules, but there is historical and legal continuity from the basic rules and provisions of the GATT to the modern WTO trade regime.

characterization was dropped and services became recognized as an integral part of the international economy. There are many obstacles that can prevent a free exchange of services between countries, but a main one is the reluctance of domestic authorities to grant foreign firms the right to establish and do business in their markets. Such a refusal may be motivated by protectionist impulses, but it may also be inspired, for example in the case of prudential banking legislation, by a desire to protect the consumer who is often viewed as being at a disadvantage with respect to the foreign service provider.

Because countries have different regulatory objectives and standards, the result is that the global services market is essentially protectionist. GATT principles required non-discrimination among trade partners, national treatment of foreign suppliers and transparency in the process by which domestic rules are developed, but the provision of services often requires the opposite behaviour if the consumer is to be protected and provided with a reliable and quality service. Governments generally seek to provide consistent regulation over their own markets; again, arguably this may require discrimination against trade partners that apply different standards to trade in services. Because services are processes, defining them is difficult unless a strict functional definition is employed. The stricter the definition, however, the greater the chances that discrimination will occur. Yet, without strict definitions, domestic regulation may be more easily circumvented.

The tasks for the negotiators at the Uruguay Round were to incorporate GATT principles of transparency, national treatment and reciprocity, as well as newer principles such as market access, into an area of trade that was conceptually dissimilar from trade in goods, which was the normal milieu of GATT principles and practice (Arup 2000). Given the paucity of information on trade in services, the first task was to develop a common data base on which substantive decisions could later be made. Second, a code of principles (which later became known as the General Agreement on Trade in Services—GATS) would have to be negotiated that provided for a standard of treatment between countries of trade in services. Finally, the code of principles would have to be applied to specific sectors of services trade. To do this, negotiators needed to analyse existing measures that restricted trade in services in order to propose measures that would liberalize trade in specific services sectors.

The two other new issues on the Uruguay Round agenda were investment and intellectual property. Investment was included because by the 1980s it had become apparent that investment was

interchangeable with trade, and, more important, that trade liberalization may be less valuable in stimulating international economic exchanges unless it is accompanied by liberalization of investment regimes. However, investment has always attracted considerable regulation in importing countries because of the risk to sovereignty associated with high levels of foreign investment in sensitive industries. In the Uruguay Round, the negotiation of a multilateral investment agreement eventually proved an unreachable goal, and the agreement that was reached on Trade-Related Investment Measures (TRIMS) dealt only with a small proportion of the issues raised in the negotiation.

Trade-Related Intellectual Property, better known as TRIPS, was the third of the new issues. Intellectual property rights grant state protection to producers of new ideas, but this protection was not well established in the international economy (Maskus 2000). Negotiations in the Uruguay Round began by addressing the problem of counterfeit goods in international trade, but developed countries—which asserted that inadequate protection of intellectual property rights was a serious non-tariff barrier to trade—quickly pressed for a broader negotiation over patents and copyrights. Developing countries, led by India and Brazil, viewed TRIPS protection as a potential barrier to trade in its own right, but they were more concerned over the monopolies effectively granted in developed countries for products like pharmaceuticals which they considered crucial to the public interest. The developing countries acquiesced on this issue because they felt their losses were compensated by gains elsewhere in the overall accord, and an agreement was concluded that set international standards for certain protections dealing with copyrights and patents (Winham 1998a). However, the controversy over the TRIPS Agreement continued as a mainstay of WTO politics, as developing countries saw intellectual property rights as a mechanism by which developed countries could maintain a competitive edge relative to countries that lacked a sophisticated technological infrastructure.

Developing countries

For most of the history of the GATT, the developing countries have been marginal players. The GATT itself was mainly a creation of the United States and its Western allies, and it mainly focused on trade rather than economic development, which was the central concern of the poorer countries of Africa, Asia, and South America. In terms of trade policy, most developing countries pursued a policy of import substitution industrialization (ISI), which called for high protective tariffs to force consumers to purchase domestic-made products at the expense of imports. These policies encouraged developing country governments to pursue trade policies of self-sufficiency and to seek 'special and differential' benefits in GATT negotiations in lieu of accepting the multilateral rules of the GATT based on reciprocity. The upshot was that as the GATT system matured, it became clear that one of the major threats to that system was its inability to be relevant to traders and governments in countries representing over two-thirds of the world's population. This threat was largely overcome in the Uruguay Round negotiation, for one of the results of the negotiation was that for the first time developing countries became fully integrated into the world trade regime.

The developing countries did not support the initiation of the Uruguay Round. Led by India and Brazil, they insisted they were not sufficiently developed to negotiate the new issues such as services on an equal footing with the developed countries. Also, they argued that developed countries had not honoured their past commitment in traditional goods such as textiles or agriculture, and that further liberalization in these areas would be a precondition to any new negotiation. However, once developing countries relented and agreed to negotiate, they quickly engaged in all issues before the negotiation. As the negotiation wore on, it became clear that the capacity to determine the outcome of the Uruguay Round fell mainly to the two major trading powers, the United States and the European Union. At this point, a curious change took place: the major powers that had been so insistent on a new negotiation reached a deadlock largely over agriculture, while the developing countries that had fought so hard against a new negotiation for most of the 1980s became the greatest advocates for its successful conclusion in the early 1990s. From 1991 until the conclusion in December 1993, the developing countries kept the pressure on the majors to settle their differences, which was an important element in the multilateral agreement that was eventually reached.

The turnabout in the developing countries' position was one of the most interesting stories of the Uruguay Round (Winham 1998a). It occurred, first, because developing countries were advantaged by two negotiating principles that underlay the Uruguay Round, namely, consensus and the single undertaking. Single undertaking meant that all issues of the negotiation were treated as a single package with no exceptions, unlike the Tokyo Round where agreements were signed on a plurilateral (or pick and choose) basis with the result that countries were subject to differing rights and obligations. Consensus—which was a traditional GATT principle—meant that multilateral agreement required the passive support (that is, no formal opposition) of all participants. These principles combined to increase the power of small and middle powers at the Uruguay Round, which was dramatically demonstrated at the 1988 ministerial meeting in Montreal when five Latin American countries withheld consensus from an interim package agreement because their concerns over agriculture were not being met by the major countries. This action emboldened the developing countries, and led them to take greater interest in the overall negotiation.

Second, despite the reality that developing countries continued to be economically disadvantaged in comparison to developed countries, the agreements reached at the Uruguay Round were favourable to the interests of the former. Developing countries as a group benefited from agreements on agriculture, textiles, and clothing and probably services, while they likely lost on intellectual property and anti-dumping practices. Most important, however, developing countries were advantaged by the institutional arrangements resulting from the Uruguay Round Agreements, namely the strong dispute settlement mechanism and the creation of the World Trade Organization itself. On balance, these advantages encouraged the developing countries to support the Round.

Finally, and most important, the market-based economic reforms that took place in many developing countries in the 1980s encouraged their governments to look more favourably on the market-based principles and objectives of the GATT. That these changes were concurrent with pressures to liberalize economies from Western countries and international financial institutions is undeniable, but in the end the fall of communism and the obvious success of certain free market countries like Singapore or Taiwan led to an internal policy revolution in many countries. For example, India suffered a severe financial crisis in 1991, following which it took reforms designed to

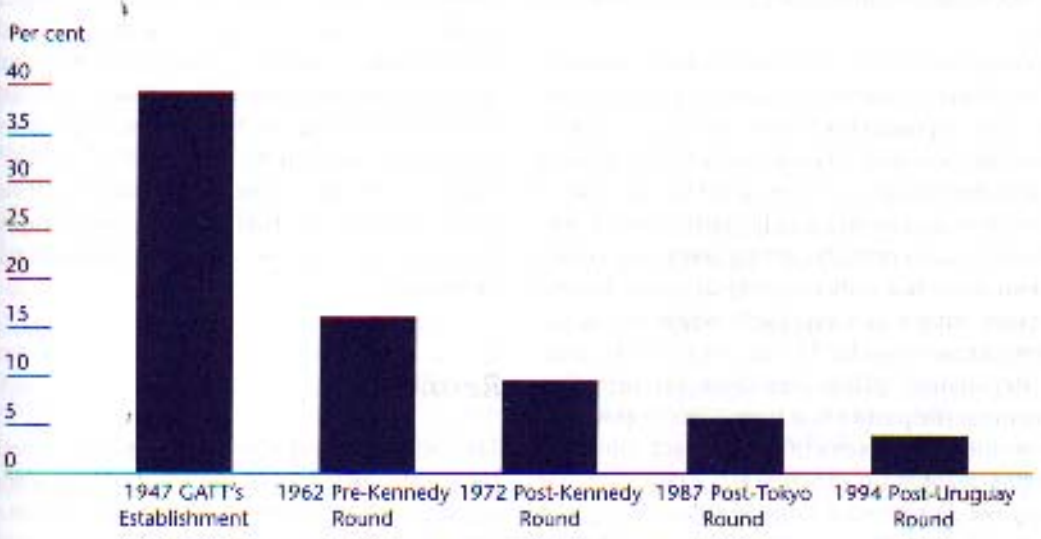

Fig. 4.1 Average industrial tariffs in developed countries since 1947

Source: Department of Trade and Industry, UK, www.dti.gov.uk/expenditure/pdf/chapter_8.pdf

deregulate the national economy and increase its economic efficiency. In the wake of these domestic reforms, India revised its negotiating strategy at the Uruguay Round from opposition to support for a multilateral agreement. In India and in many other developing countries, the impact of internal reform was to increase the congruence between domestic policies and the principles of the international trade regime (see Figure 4.1).

The United States and the European Union

The structure of the contemporary international trade regime is mainly centred around the US–EU bilateral relationship (Bergsten 1999). However, this was not always the case. Until the early 1960s, the United States held preponderant position in relation to other members of the GATT, and in multilateral negotiations it offered most of the concessions and expected little in return from other countries. This situation began to change in the Kennedy Round when the six European Common Market countries negotiated as a single bloc. The change was largely completed by the Tokyo Round, when the European Community (now the European Union) had expanded to include the United Kingdom, making the EC the largest trading entity in the international system.

Negotiations in the Tokyo Round and subsequently could be characterized as a pyramidal process. This means that agreements were usually initiated between the principal players, namely the United States and the European Union, and then presented successively to middle and smaller parties to establish a multilateral consensus. Pyramidal negotiation operates when there is a wide disparity of power among negotiating parties and especially when the negotiating structure is bipolar. On the positive side, pyramidal negotiation places the onus for initiating agreement on the parties that have effective power to veto a multilateral agreement. A drawback, however, is that this negotiation structure leaves less scope for smaller powers involved in large multilateral negotiations to influence the outcome or to protect their particular interests. As a result, criticism from smaller actors, including especially developing countries, is endemic in multilateral trade negotiations.

The negotiation over agriculture in the Uruguay Round offered a good example of pyramidal negotiation. At the outset of the negotiation, a group of approximately fourteen agricultural exporters from among the developed and developing countries formed under Australian leadership to promote the liberalization of global agricultural markets. Known as the Cairns Group, these countries played an important role in the early stages of the negotiation in bridging the differences between the United States and European Union over agricultural trade. However, by January 1992 it became clear that the Uruguay Round was blocked, and that the reason was the agricultural negotiation between the majors. Agricultural trade had long been a difficult problem for many countries in the GATT system, but in the Uruguay Round the inherent problems of agriculture became compounded because this issue pitted the interests of the United States and European Union against one another. The US–EU differences stemmed mainly from the fact that since the 1960s Europe had established a protectionist policy under the Common Agricultural Policy (CAP), while the United States was moving toward a comparative advantage in agricultural exports. The Uruguay Round thus turned into a politicized contest between the majors, and for eighteen months the main activity of the multilateral negotiation was a series of bilateral encounters between US and EU officials. This blockage halted progress in areas other than agriculture, and even between other countries. The United States and the European Union eventually reached a resolution of their differences in the 'Blair House' accords on agriculture, but agriculture continued to be the major stumbling block to a general agreement until very late in the negotiation. This whole affair re-emphasized the importance of the majors in multilateral trade negotiation.

Results

The Uruguay Round agreements were concluded on 15 December 1993. They represented an enormous accomplishment for the world trading system. These agreements created the World Trade Organization, which represented institutional progress in that the WTO is a formally constituted international organization and not—as the GATT was—mainly a contract over

trade rules between countries. The WTO had enormous symbolic importance for the world trade regime, but it also had practical significance as well. Internally, the WTO and the Uruguay Round agreements provided for clearer rules on trade, and reduced the fragmentation and inconsistency that had existed between various GATT-sponsored agreements. Externally, the WTO reinforced the role of trade in international economic relations, and it permitted trade concerns to be more fully represented in relations with the World Bank and the International Monetary Fund.

Second, the various agreements reached at the Uruguay Round greatly expanded the rules of the international trade system. New issues like services were brought under multilateral rules for the first time, while old issues like agriculture and textiles which long had been essentially outside GATT disciplines were brought under multilateral rules, thereby beginning the lengthy process of reducing protectionism in two sectors that had long resisted the progression toward a more liberal world trade regime (Laird 1997). Third, the Uruguay Round agreements were accepted by the developing countries engaged in the negotiation, and they represented the most far-reaching commitments those countries had made in the international trade regime. Effectively, they brought the developing countries into that regime. The Uruguay Round concluded at a time when many developing countries were undergoing substantial liberalization, and the confluence of change in the developing world and the deepening of the multilateral regime will engage trade more fully in the progress toward international development.

Finally, the Uruguay Round agreements represented a further step toward a system based on rules instead of power in international trade. The agreements advanced the rules-based nature of trade relations between countries, and thereby increased the economic security of smaller and middle countries in their relations with larger powers. In particular, the agreements established a formal, integrated dispute settlement system to replace the largely ad hoc mechanism that had evolved under the GATT. The agreements created an obligation for countries to adjudicate an issue if a trading partner seeks this recourse. Conversely, countries are obligated not to use unilateral trade sanctions as an alternative to multilateral dispute settlement actions under the WTO. Both provisions were intended to increase the prospects that countries regardless of their size and power would be equal before the law in trade disputes.

Key points

- Developing countries resisted efforts by developed countries to establish a new GATT negotiation following the Tokyo Round.

Table 4.1 Results of GATT negotiations: 1960–94

Negotiation	No. of countries	Results
Dillon Round 1960–1	26	• Average tariff cut of 10% on $4.9 bn of trade
Kennedy Round 1963–7	62	• Average tariff cut of 35% on $40 bn of trade • Anti-dumping code
Tokyo Round 1973–9	102	• Average tariff cut of 35% on more than $100 bn of trade • Six codes dealing with non-tariff measures, plus aircraft code • Revision of GATT articles for developing countries
Uruguay Round 1986–94	128	• Average tariff cut of 39% on $3.7 tr of trade • 12 Agreements (including Agriculture, Textiles, Subsidies, Safeguards) • New issues: Agreements on Trade in Services (GATS) and Trade Related Intellectual Property (TRIPS) • Dispute Settlement Understanding • Numerous other agreements

- The Uruguay Round (1986–93) comprised a lengthy negotiating agenda, including new issues such as trade in services and trade-related intellectual property (TRIPS).
- The most difficult issue in the Uruguay Round was trade in agriculture, particularly between the major parties, the European Union and the United States.
- The Uruguay Round was an enormous accomplishment for the international trade system. International rules were established in most important areas of international trade, the World Trade Organization (WTO) was created, and a more effective dispute settlement system was established. The developing countries became full participants in the WTO system.

The WTO in action: 1995 and beyond

The structure of the WTO

The WTO was created as part of the results of the Uruguay Round negotiations that concluded on 15 December 1993, and it came into existence on 1 January 1995. Also included in the Uruguay Round results were a series of agreements that established rules dealing with agriculture, services, textiles and clothing, intellectual property, as well as a number of other issues related to trade. These agreements advanced substantially the rules-based nature of the trade regime originally established under the GATT. As the late Professor Raymond Vernon (1995: 330) observed shortly after the conclusion of the Uruguay Round, 'The agreements, if taken at their face value, show promise of reshaping trade relationships throughout the world.' This statement surely reflects the stunning accomplishment of the negotiation, which was all the more remarkable given the low expectations held at the start of the round.

The WTO portion of the Uruguay Round agreements created an unusual international organization. Most international organizations have specified procedures for making decisions in the name of the collectivity, but instead the WTO continued many of the consensual practices of the GATT. Essentially the WTO represented a contract between its members, the purpose of which was to establish trade rules and then to back up those rules with a powerful dispute settlement system. To understand the WTO, it is necessary to examine important legal elements drawn from the WTO Agreement and the Dispute Settlement Understanding (DSU).

At the outset, the WTO Agreement explicitly established a new international organization which would provide symbolic visibility and permanence for international trade policy in the international system (Jackson 1998). The WTO was vested with legal personality, which the GATT did not have, and which placed the WTO on the same footing as other organizations like the IMF or World Bank. The WTO Agreement further stated the WTO should be the 'common institutional framework' for trade relations among its members, and that it should 'facilitate the implementation' of the various Uruguay Round Agreements. These provisions were important in that they centralized the governance of the trade system far more than had existed under the GATT. By comparison, the GATT in the 1990s was rapidly becoming a pot-pourri of decentralized separate agreements which risked creating a watering down of the central obligations of the trade regime.

Second, the WTO Agreement provided that members would accept the WTO and the various other Agreements as a single piece, and would be obliged to bring their domestic laws into conformity with those Agreements. This commitment incorporated the well-known concept of 'single undertaking' that crystallized during the Uruguay Round negotiation. The single undertaking meant that countries were not free to pick and choose among the various agreements as in the Tokyo Round, but were required to accept and implement the agreements as a package deal. This stratagem insured that negotiators would make trade-offs in arriving at their final offers in the negotiation, and it also helped to clarify the obligations of members in the implementation stage that followed.

Third, the WTO Agreement provided for institutional structure and decision-making procedures for the new organization, which was more complex than the GATT had been to take account of the greater complexity of the subject matter in the Uruguay Round Agreements. On one point however the WTO continued the practice of the GATT, namely in the provision of decision making by consensus. The WTO Agreement in Article IX defined consensus as existing 'if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision'. This procedure meant that the WTO would continue mainly as a contract organization that would not create obligations for individual countries beyond those it had accepted under the consensual decision-making practices of the WTO.

As for the Dispute Settlement Understanding, it is first necessary to note that the Uruguay Round negotiators were aware they were creating a vast addition to international trade laws, and they further recognized a legal system needed to be backed up with judicial procedures in order for the laws to have any practical impact. In practical terms, this meant that WTO members embroiled in a dispute with another member should have a right to proceed to a judicial process, and that the result of that process should be (legally) binding on the parties. The DSU provided for this basic right, and its significance can be appreciated by the fact that similar rights are practically non-existent in international law.

The practice of dispute settlement was begun on a customary basis under the GATT, and certain procedures, such as the establishment of adjudicatory panels to hear cases, were well in place prior to the creation of the WTO. The WTO's DSU improved the system in a number of particulars. First, whereas the GATT had required the consent of both parties for a panel to be established (thereby allowing the party complained against to quash the panel procedure), the DSU provides in Article 6 that: 'If the complaining party so requests, a panel shall be established . . .'. Furthermore, for the panel decision to become legally binding (or 'adopted' by the Council, the plenary body of the GATT's Contracting Parties), the GATT required consensus of all parties, meaning that the party that lost the case would have to acquiesce if the report were to be adopted. This procedure was not as meaningless as it might seem for dispute settlement was a valued concept under the GATT, and consensual adoptions were the normal outcome of disputed cases. Nevertheless, GATT practice was an example of weak law, which was strengthened under the DSU by the requirement that a panel report would be adopted unless members decided by consensus *not* to adopt the report. This meant that a winning party would have to oppose adoption if the report was to be rejected, which is unlikely; hence the DSU rules virtually provide that panel reports are automatically binding (Palmeter and Mavroidis 1999).

Second, the DSU strengthened the scope and mechanics of dispute settlement in the WTO. An Appellate Body was established to improve the consistency of legal decision making. The coverage of dispute settlement was extended to all areas of the Uruguay Round Agreements, which provides for an integrated legal system and removes the competition that previously existed between differing dispute settlement mechanisms. Finally, the DSU makes it obligatory for Members engaged in a dispute to use the WTO system and not resort to unilateral measures as done in the past to settle the matter themselves. Taken in sum, the DSU represented an extraordinary step forward in the application of legal principles and methods in international law. That it would happen in the trade regime is an indicator of how much that regime has become governed by rules established in multilateral negotiations.

The WTO as an organization

The WTO is most accurately described as a formally contracted body of rules backed up by a judicial system and a minimum of political structure (Winham 1998*b*). The GATT, which was mainly a contract between parties, had provided for the possibility of joint organizational action by the 'Contracting Parties', but such actions were not emphasized in the General Agreement. By contrast, the WTO Agreement outlines a number of specific functions to be taken by the WTO as a collective body. These include: the implementation and administration of the Uruguay Round Agreements; maintenance of a forum for further negotiations; administration of the dispute settlement system; administration of the Trade Policy Review Mechanism (TPRM); and liaison with the World Bank and the IMF. With the exception

of liaison with international financial institutions, these functions had been first established under the GATT on a customary basis.

The principal structures established to carry out the functions of the WTO are a Ministerial Conference meeting every two years; a General Council, which is a continuation of the Council of the GATT, and which can also meet as a Dispute Settlement Body and TPRM Review Body; and three councils in the area of goods, services, and intellectual property. Various other organs are mandated in the WTO Agreement, such as the Committee on Trade and Development, and additional bodies can be created by the Ministerial Conference as it deems necessary.

The WTO Agreement provided for a secretariat, which in the GATT had developed on an informal and customary basis. The WTO secretariat is small compared to the tasks it is expected to perform, and it is certainly small in relation to other international economic organizations. For example, in 1996, the complete staff of the WTO numbered 513, whereas comparable figures for the World Bank and the International Monetary Fund were 6,781 and 2,577 respectively (Blackhurst 1998). This same research showed that the WTO personnel numbers were exceeded by some fifteen international organizations, including some, such as the UN Industrial Development Organization (1,758 individuals) and the World Intellectual Property Organization (630 individuals), that have a much lower profile than the WTO.

As noted previously, decision making in the WTO is based on consensus, which is the same practice that had developed by custom in the GATT. Consensus is not the same as unanimity, and it is clear that the legal definition in Article IX of the WTO Agreement, as well as past and contemporary practice, permits countries to abstain and therefore to allow decisions to go forward in cases where not all members are in agreement with the issue under consideration. Consistent with the requirement for consensus, most organs of the WTO are plenary and all members are able to participate.

The tasks of the WTO are carried out by its professional staff, and also by the vigorous involvement of the Geneva delegations of the WTO members, which permits the WTO to function with a small secretariat. The WTO is usually described as a 'member-driven' organization, meaning that the members and not the secretariat are mainly responsible for setting the agenda and carrying out the functions of the organization. In the important routine tasks of the organization—including judgements on waivers of obligations, initiation of disputes or complaints, accession of new members, or working parties on free trade areas—action can only be taken by officials from member governments. Research from 1997 indicates that to cover this workload, there were some 97 members with representation in Geneva, with an average of about five professional officers per delegation (Blackhurst 1998). These officials, plus their back-up support in home capitals, exceeded slightly the manpower available in the WTO secretariat in the same year.

In addition to the principal structures of the WTO mentioned previously, there are over twenty-five committees and working groups, and a fluctuating number of working parties on accessions of new members, all of which in principle are plenary bodies. In addition, there are organs with limited membership, including the Textiles Monitoring Body, plurilateral committees, dispute settlement panels, and the Appellate Body. Additionally, multilateral trade negotiations occasionally create further structure and tasks, and during the Tokyo and Uruguay Rounds a parallel structure under a Trade Negotiations Committee was struck to service those negotiations. Finally, there is an informal and fluid structure of consultation groups designed to bring 'like-minded' members together to discuss issues of common concern. The work associated with the various organs of the WTO is carried out mainly by the Geneva delegations of the members, with assistance from the WTO secretariat. The frequency of meetings is large and growing, and countries with small delegations are hard pressed to monitor, let alone direct, the activities of the organization. Indeed, many of the least developed countries have no representation in Geneva, and have little capacity to pursue their own interests independent of the positions taken by developing countries as a bloc.

One of the important tasks of the WTO is to monitor and research the trade policies of the members. An important element in this task is the Trade Policy Review Mechanism which was begun by the GATT in 1989, roughly midway through the

negotiation of the Uruguay Round. The TPRM is simply a review of a member's trade policy regime, conducted in part by the member itself and by officials of the GATT/WTO secretariat. Major trading countries such as the United States can expect a review once every two years, but for smaller countries the rotation will be less frequent. The main purpose of a TPRM review is information dissemination and transparency, but the reviews are also a valuable tool to evaluate whether members are in full compliance with their obligations under various WTO Agreements. The TPRM reviews are an example of collective executive action in an organization that has very much played down the executive function in comparison to the rule making and rule adjudication functions. Depending on the development of the international trade system and the politics conducted within that regime, the executive function of the WTO could become a much more important factor in the future.

The politics of the WTO

It is common to describe the WTO as a 'rules-based' system. Like the GATT before it, the WTO mainly consists of a set of rules intended to promote trade between member countries, and especially to provide for non-discrimination in trading relations. In any system of rules, a mechanism for handling disputes is a natural and logical extension of that system. In the GATT, a dispute settlement system developed by customary practice, but in the WTO it was mandated by international agreement in the form of the DSU, and included in the Uruguay Round Agreements. The DSU is a particularly powerful form of international dispute settlement, and the management of this system has created political controversy among the members of the WTO.

At the outset it should be noted that dispute settlement procedures have been frequently used in the WTO. World Trade Organization statistics (WTO 2000c) indicated that in slightly more than five years of operation, there had been some 193 member complaints to the WTO on 151 distinct trade issues. By October 2003, total complaints numbered over 300. Approximately half of the complaints are settled or dropped in the consultation phase that precedes formal dispute settlement (Davey 2000). Once a case is formally engaged, it proceeds to a three-person panel comprising trade experts for a legal decision, and then if requested, it will continue to the Appellate Body on appeal. Once a decision has been reached, the next issue is implementation. This is a problem the WTO accepted in moving to a legally binding dispute settlement system compared to the more diplomatic and political system that existed previously in the GATT, where countries could avoid a legal decision they could not live with. In the WTO, countries are legally obliged to accept and implement a negative dispute settlement decision, and it is possible for an injured country to take retaliatory action, even though such an action is counter-productive from the standpoint of liberalizing the trade regime in that it erects further barriers to trade. But for the largest WTO members, it is usually impossible to oblige a powerful country—even through retaliatory sanctions—to implement an adverse decision that it is determined to ignore. This was particularly the situation with the *Hormones* and *Bananas* cases, two disputes that divided the United States and the European Union. The problem is that if major powers are able to circumvent the obligation to implement adverse panel decisions, the WTO dispute settlement system will quickly lose the moral authority to secure implementation from any countries. This could be a fatal blow to the WTO rules-based regime.

There are other problems with dispute settlement that have been raised by developing countries. One is the costs of litigation before WTO panels and the Appellate Body. There has been a tendency for disputes to grow in legal complexity, a problem that was already evident in the GATT in the late 1980s. There are now more agreements to consider, and the prospect of appeal to the WTO Appellate Body has increased the importance of factual evidence and precise legal argument. The complexity and costs are especially hard to manage for developing countries, which generally have small delegations in Geneva and therefore may be forced to choose between hiring expensive counsel or simply forgoing the opportunity to pursue a dispute settlement case. These difficulties can impel developing countries toward a defensive rather than offensive posture in dispute settlement, and may reduce the market-opening possibilities that the dispute settlement system may hold for more affluent WTO members.

A second problem is what some countries have called the 'politicization' of the dispute settlement system. One issue is the tendency in some countries that have lost WTO cases for governments to come under political criticism for permitting unwarranted foreign interference in domestic policies. Such criticism inevitably forces government officials to take political acceptability (as well as WTO law) into account when deciding how to implement dispute settlement decisions. A second issue is the decision of the Appellate Body to accept *amicus curiae* briefs from environmental non-governmental organizations (NGOs) in the *Shrimp–Turtle* case between the United States and a number of developing countries. The Appellate Body took this action to address criticisms that by refusing to accept inputs from NGOs (such as, for example, the World Wildlife Fund or Greenpeace), the WTO dispute settlement system was undemocratic and not inclusive. However, the action of accepting legal briefs from NGOs undercut the concept of the WTO as an organization having nation states as members, especially when some poorer WTO members might not have the capability or financial resources to submit *amicus curiae* briefs themselves, even if they had the legal right to do it. Thus, in attempting to increase the democratic inclusiveness between developed country governments and the NGOs which are their domestic constituents, the democratic inclusiveness and juridical equality of the developing country members of the WTO is called into question.

In spite of such problems, dispute settlement is functioning reasonably well in the WTO and indeed it is the cornerstone of the regime. Any system of rules requires a judicial function to interpret and apply the rules to specific cases, and the WTO system continues to serve the interests of the members. However, the rules are not always clear, and some judicial interpretation will be necessary to apply the rules to specific cases. As a result, panels and the Appellate Body will continue to face difficult decisions in which criticism is inevitable but outright condemnation is unlikely.

Negotiations

One of the major tasks of the WTO is to promote trade negotiations. This task is mandated in the WTO Agreement, which calls on the organization 'to provide a forum for negotiation' on matters arising under the Uruguay Round Agreements, and on further issues concerning the multilateral trade relations of the members. This mandate is more precise than that which existed under the GATT. However, the sponsorship of negotiations did arise by customary practice under the GATT, and in time those negotiations proved their value in terms of forwarding the agenda of trade liberalization. Hence, the WTO Agreement effectively codified GATT customary practice, and built negotiation of new issues into the organizational mission of the WTO.

The WTO moved quickly after 1995 to carry out its mandate to sponsor negotiations. In the area of trade in services, the Uruguay Round had concluded without commitments forthcoming from members in financial or telecommunications services. These became subjects of new negotiations, and by 1997 the WTO was able to announce major new agreements in both areas. The telecom agreement produced new liberalizing commitments from sixty-nine governments covering 90 per cent of global telecom revenues, while the financial services agreement included fifty-six scheduled offers from seventy countries (counting the EU as fifteen countries). Most important, the United States participated in both agreements, and dropped its previous refusal to apply concessions to all other participating countries on the basis of the most-favoured-nation principle.

Further, in 1997, another negotiation concluded that was novel and not a continuation of the Uruguay Round. In March of that year, some forty governments concluded the WTO Ministerial Declaration on Trade in Information Technology Products (ITA) that freed trade on computer and telecommunications equipment. This agreement was concluded very quickly and it is significant because, together with the telecom agreement, it covers trade of a value equal to that of agriculture, automobiles, and textiles combined. These agreements represent the new economy in terms of commerce between nations, and it is clear that that commerce is more liberalized than the commerce of the old economy.

In the areas of agriculture and trade in services, the Uruguay Round agreements had included a 'built-in agenda' that called for new multilateral negotiations to start in 2000. These negotiations got under way despite the failure of the Seattle Ministerial Meeting in

December 1999, which attempted to establish a mandate for a new round of negotiations in all areas. Thus, even allowing for the setback of Seattle, the WTO demonstrated it was capable of sponsoring new negotiations on a sectoral basis following the conclusion of the Uruguay Round. Over time, it appears that negotiation has become less an exceptional part of the GATT/WTO regime and more part of the normal business of multilateral trade relations. The WTO is moving toward a regime of 'permanent negotiation', in which the organization begins to look more like a typical national legislature and less like the occasional diplomatic encounters of international relations.

The WTO Agreement calls for a ministerial meeting every two years, and the Seattle meeting of December 1999 provided an opportunity for some members to press for the commencement of a major new round of trade negotiations. As had been the case with the Uruguay Round, calls for a new negotiation occasioned a major rift in the multilateral trade regime. The European Union enthusiastically supported a new negotiation, and proposed a set of new issues including the controversial subjects of investment and competition policy. It was, however, less forthcoming on agricultural subsidies. For its part the United States also favoured a new negotiation and proposed reductions in trade barriers in industrial goods, but it insisted on introducing trade sanctions to protect domestic policies related to labour and the environment. Developing countries feared these would be directed mainly at them. The United States also resisted tariff concessions on textiles and was lukewarm toward negotiations on investment and competition policy. On agriculture, Washington carried on its long-standing policy of making maximum demands on the European Union. Japan also supported a new negotiation, especially on new issues, but it was prepared to stonewall discussions on agriculture. Finally, the fifteen-nation Cairns group of agricultural exporters, including both developed and developing countries, continued the strong position they had initiated in the Uruguay Round against export subsidies on agricultural trade.

The developing countries were generally hostile to the idea of a new negotiation, largely on the grounds that there was unfinished business from the Uruguay Round, such as agricultural liberalization and implementation of the Uruguay Round Agreements; they argued that these had to be settled before the international trade community should undertake new initiatives. India took the lead in enunciating these concerns, and elaborated what became known as the implementation issue. A central argument was that the Uruguay Round Agreements had been unfair to developing countries, in that those agreements obliged governments to carry out costly administrative reforms, or to participate in subsequent negotiations they were unprepared to tackle. Arguably, these obligations were more easily borne by developed countries that were more affluent, or already had more elaborate government or administrative structures. Another argument in the implementation debate was that developed countries had drawn up, and then implemented, the Uruguay Round Agreements in a way that denied to developing countries the benefits supposedly forthcoming from those agreements. This argument was buoyed by the belief in developing countries that they had accepted greater liberalization of their own markets than was the case in developed countries, with the result that they did not receive the export access for their products, especially agriculture and textiles, that they had bargained for. In sum, India made the case that the developing countries had received a bad deal from the Uruguay Round, and that before any new negotiation could begin some effort should be made to redress the inequities of the previous negotiation.

The Seattle Ministerial Meeting was thus compromised by conflicting positions of the various WTO members (Odell 2002). To this was added a bitter fight over the selection of the WTO director-general, which took place over the six months prior to Seattle and compromised the preparations normally required for success in any major ministerial meeting. The meeting itself in Seattle was also compromised by street protests by groups opposed to the WTO and to globalization, and even by mismanagement of the negotiating agenda at the meeting itself. These factors combined to make the Seattle Ministerial Meeting a spectacular failure. Ministers left Seattle without agreeing to launch a new round, and the collapse was so complete that no communiqué was produced promising the usual efforts at cooperation in the future.

Members were alarmed at the failure at Seattle, and recognized it as a test of the success of the WTO itself. Following the Seattle meeting, work continued at the

technical level to bridge the many gaps between WTO members. It was recognized the two-year cycle of ministerial meetings provides a stern test for the political viability of the organization, and members were determined to resolve as many problems as possible before the next meeting in the autumn of 2001.

Gradually, the major participants introduced concessions into their negotiating positions. The European Union reduced its expectations for new rules on investment and competition policy, and the US dropped its contentious demands on labour rights and the environment. There was also some promise for movement in agriculture, which traditionally has been the sticking point in GATT negotiations. Coupled with the increased flexibility shown by the participants, the WTO secretariat itself was better organized to mediate political differences and to manage the enormous detail associated with a large multilateral trade negotiation.

By September 2001 the most extreme positions had been modified and the parties had achieved a single negotiating text, which is the *sine qua non* for success in multilateral negotiation. By this time it was clear that the major issues for the WTO membership were those of the developing countries, including especially implementation, agriculture, as well as a concern that had suddenly risen on the world stage, the access to medicines needed to combat disease in poorer countries. Developing countries were fearful that the Intellectual Property Agreement would prevent access to cheaper generic drugs to fight AIDS and other diseases that preyed on poorer societies, and they demanded a modification of the TRIPS Agreement to permit discretion to override drug patents in the event of a national health emergency. Developed countries were generally unwilling to forgo concessions that had been achieved in the Uruguay Round, and the issue festered for several years while the AIDS epidemic gathered momentum, particularly in Africa. The severity of the AIDS crisis brought moral pressure to bear on developed country governments and the pharmaceutical industry which had supported strong patent rights in the Uruguay Round.

The ministerial meeting was held in Doha, Qatar, in November 2001. The conference agenda was pre-negotiated and well prepared, for in comparison to the Seattle draft declaration that had 402 pairs of square brackets in the text (which indicate disagreement), the draft declaration for the Doha meeting had only thirteen pairs of brackets remaining for ministerial decisions (Odell 2002). The Doha draft reflected the continuing effort at compromise that had characterized the discussions since September. However, the TRIPS/health issue remained outstanding, and it was important enough that it threatened to cause the meeting to break down in disagreement. The stakes were high: for the developed countries, the TRIPS agreement represented an important security against the misappropriation and even theft of intellectual property, but for the developing countries access to lower-cost generic medicines could be easily translated into lives saved or lost in the fight against AIDS and other diseases. An end to this impasse was eventually reached through an agreement to extend the date by ten years, until 2016, for least developed countries to provide patents on pharmaceuticals, and by a formal affirmation that 'the TRIPS agreement does not and should not prevent Members from taking measures to protect public health'. The latter statement only reiterated rights that were already contained in the TRIPS agreement itself, but it was accepted by developing countries because it created a presumption that WTO members would be able to exercise their rights to procure generic medicines, and more important, that other members (particularly the USA) would be unlikely to take dispute settlement actions against members that exercised those rights.

The resolution of the TRIPS/health issue insured success of the Doha meeting, although it would take another twenty-one months to eliminate the final obstacles to cheaper drug imports (WTO 2003*b*). Other issues were settled at Doha, particularly the question of implementation where the parties agreed to roll much of this agenda into the forthcoming negotiation. With the success of the Doha meeting, the WTO members formally initiated a new multilateral negotiation with a deadline of December 2004. The agenda comprised twelve wide-ranging issues, the focus of the negotiation was development, and in keeping with this focus the members eschewed the term 'round' in favour of the title Doha Development Agenda (DDA). The DDA commenced in January of 2002.

In its short history, the WTO suffered a serious setback in the Seattle Ministerial Meeting, and then it rebounded to launch a new multilateral negotiation in the Doha Ministerial Meeting. The latter meeting laid out an agenda for the negotiation, and the negotiation proceeded, but it was met with frequent delays and

progress was slow. The first major deadline for the DDA was the ministerial meeting in Cancun, Mexico, in September 2003, at which time the Declaration from the Meeting was to take the form of an updated agenda and progress report on the DDA. In Cancun, the WTO members were unable to find consensus on a Ministerial Declaration. Once again, the WTO met with failure.

The goal at Cancun was to reach an interim agreement on the outstanding problems of the negotiation sufficient to advance the work of the DDA. This goal ended when the Mexican foreign minister chairing the conference exercised his discretion and abruptly called a halt to the negotiation. The issues on which the negotiation broke were investment and competition policy, which were pressed by the European Union and Japan but vigorously opposed by a group of mainly African developing countries. However, behind these issues was the far greater problem of agriculture, where again developing countries were intent to register their displeasure at the agricultural subsidy practices of the United States and the European Union. For example, four West African producers of cotton demanded a sectoral initiative to eliminate cotton subsidies in countries such as the USA, EU, and China, but they received a response suggesting African countries should diversify their production, a message which they interpreted as telling them to stop growing cotton. This response inflamed the Africans, and it added to the antipathy that threatened to spiral out of control at the conference.

Beneath the acrimony of the Cancun conference lay a subtle change in the politics of the WTO. The GATT was the creation of developed countries, and up to the Uruguay Round the developing countries were largely passive bystanders in the development of the international trade regime. This changed with the creation of the WTO, and the change has since accelerated, particularly with the accession of China to full WTO membership (WTO 2001*b*). At the Cancun Ministerial Meeting, a group of developing countries formed a coalition known as the G21 + countries that succeeded in polarizing much of the debate into a North–South struggle. The basis for this polarization was the firm belief of the G21 – that the benefits of the trade regime have not been equitably proportioned between developed and developing countries. This is a belief that is increasingly given some credence by observers of international economies, and will have to be addressed by the organization in the future if progress is to be achieved in the international trade regime ('Special Report', *Economist*, 20 September 2003).

Key points

- The WTO is a rules-based international organization that operates on the basis of consensus. Members are legally bound to act consistent with the rules they have negotiated as interpreted by the dispute settlement mechanism.
- The work of the WTO is carried out by a series of committees supported by a small international secretariat. The dispute settlement mechanism has been especially active.
- The WTO has promoted further negotiated agreements in financial and telecommunications services and in trade in Information Technology Products.
- The WTO Agreement calls for a Ministerial Meeting every two years. In December 1999, in Seattle, Washington, some members sought support to commence a new multilateral negotiation, but the meeting concluded without agreement. In November 2001, in Doha, Qatar, following lengthy pre-negotiations between developed and developing countries, WTO Ministers agreed to initiate a new negotiation with a deadline of December 200

Conclusion

The start of the Doha negotiation was a reaffirmation of the direction the world trade regime has taken since the middle of the past century. The focus of the regime has been to create rules whereby countries can exchange goods and services with a minimum of interference from national governments, and the means to accomplish that task has been to reach international agreements through international negotiation. Such agreements are an important form of regulation, or system management, in the

international economy. Trade has always been regulated, but in the past that regulation mainly has been done unilaterally by national governments, and that regulation always has posed a potential threat to trade and the stability of the international economy, as the 1930s amply demonstrated. Today, the regulation of trade is carried out as much through the negotiation of trade agreements as through the actions of domestic agencies, and the purpose is to replace inward-looking national regulation with a broader conception of international rules. The purpose is to keep the trade system moving in a liberal direction consistent with an open international society, because the alternatives to an open society—which were witnessed in the inter-war period in the last century—were so damaging to the interests of all countries.

The GATT and now the WTO are central features of the international trade system. Through negotiations in these institutions, which are analogous to law-making in domestic parliaments, countries have been able to establish a rules-based regime for regulating international trade. The negotiation process is critically important to the success of the WTO, but it is a fickle and sometimes fragile process. When it is successful, the rules of the regime are advanced and all countries can be said to benefit from the greater stability and predictability that comes from a regime based on rules rather than on the play of power politics. But the negotiation process is not always successful, and just as an absence of consensus occasionally paralyses the legislative agenda in domestic parliaments, the absence of consensus also stops the WTO from dealing with problems that many members think need to be addressed. If there is a major difference between domestic parliaments and the WTO, it is that an impasse in the former rarely calls into question the survival of the institution, whereas when an impasse occurs in the WTO, there is always the fear that the organization will be eclipsed and that countries will use other means, including unilateral actions, to resolve the problems they face in the trade system. Thus an analogy is often made between the WTO and a bicycle: both need to maintain forward momentum in order to remain stable.

As it looks to the future, the greatest challenge facing the WTO will be to fully incorporate the developing countries into a liberal international trade regime. Included in the Preamble to the WTO Agreement is a statement expressing the need that developing countries should 'secure a share in the growth in international trade commensurate with the needs of their economic development'. The Cancun Meeting was a political wake-up call that the developing countries will use their negotiating power to realize their aspirations in the Doha negotiation and beyond. In the past half-century the GATT and WTO have endured through many challenges, but the task of implementing a global and inclusive trade regime will be the most imposing test of all.