

THE MAIN FEATURES OF THE NEW GATT REGIME

Anslem Francis

Institute of International Relations
The University of the West Indies
St. Augustine.

Introduction

One of the most notable developments of international economic relations in the aftermath of World War II was the establishment of international financial institutions, namely, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD). It was hoped that there would have been a corresponding institution in the area of international trade but the Havana Charter, which was supposed to be the constitutive instrument of that organization, never entered into force.

The regime for the regulation of international trade which eventually emerged was a provisional arrangement but it lasted for some four decades. However, improvisation clearly had its limitations and by the mid-1980s those limitations were becoming more and more glaring. It was against this background that the Uruguay Round was launched. The negotiations of the Round were difficult and protracted but they resulted in far reaching changes in international trade law.

At the end of the negotiations of the Uruguay Round, the Marrakesh Agreement was concluded and among other things it provides for the establishment of the World Trade Organization (WTO) which is charged with the task of overseeing the implementation of the provisions of the Agreement and its Annexes.

Before commenting on the Annexes, it should be noted that under the auspices of GATT several multilateral treaties pertaining to trade in goods were concluded, for example, Agreement on Safeguards, Agreement on Rules of Origin and Agreement on Textiles and Clothing. However, it must be stressed that these multilateral agreements were not an integral part of GATT 1947. The significance of this lies in the fact that not all Contracting Parties to the GATT were parties to these multilateral agreements, therefore, the element of universality was lacking.

Another important observation to be made about the GATT of 1947 was that it was restricted to regulating trade in goods. At the time of its conclusion that was adequate to the trade needs of the international community but subsequent developments, particularly in technology, led to a dramatic increase in trade in other sectors, most notably services. Trade-related aspects of intellectual property and investment became important issues as well, and as a result, regimes were needed to address these new concerns.

Institution Building

The Marrakesh Agreement represents a significant improvement on the provisional arrangement which preceded it, in that for the first time in the history of international trade it established an organization, the World Trade Organization, to administer the operation of the various Multilateral Trade Agreements and to regulate state behaviour.

The principal organs of the World Trade Organization are the Ministerial Conference and the General Council. Operating under the guidance of the General Council are a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights.

It would be an exaggeration to state that in the absence of an institution negotiations cannot take place, but its existence facilitates negotiations and deepens the process of multilateralism. Multilateralism has certain advantages for small states because it fosters coalition building which in turn increases bargaining power. In addition to that, the transnational character of many trade issues dictates that they have to be addressed at the multilateral level, rather than at the bilateral level.

It should be useful to enter the caveat that the advantages offered to small states with the establishment of an international institution are not

gained automatically. It is the careful deployment of diplomatic skills which would determine the level of benefits to be derived from membership in an international organization.

Extended Scope of Trade Relations

It has already been observed that GATT 1947 sought to regulate only trade in goods, and, indeed, most developing countries would have preferred if other areas of trade did not fall within the ambit of international trade law. However, the volume of trade in services was growing rapidly and the Americans, in particular, felt that the new trade regime should be extended to trade in services. Similarly, it was felt that the widespread infringement of intellectual property rights was providing the violators with an unfair advantage in international trade, and as a result the issue should be the subject matter of a treaty.

The Agreement on Trade-Related Aspects of Intellectual Property Rights incorporates both the standards of national treatment and most-favoured-nation treatment. Under the former each member must accord to the nationals of other members treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property. The standard of most-favoured-nation treatment requires that any advantage or privilege granted by a member for the protection of intellectual property to the nationals of any other country shall also be accorded to the nationals of all other members of the WTO.

The obligations imposed by the General Agreement on Trade in services are not particularly strict. Indeed, the Agreement is in the main a framework agreement. However, since the major thrust of the new trade regime is trade liberalization, it is expected that in subsequent rounds of negotiations the barriers which now exist would be progressively lowered. The schedules which now serve as escape clauses are likely to become fewer and fewer.

The Annexes

There are four Annexes to the Marrakesh Agreement Establishing the World Trade Organization and the first three are an integral part of the Agreement. In other words the Agreement and the three Annexes must be seen as a package. States were not given the option of deciding whether they wanted to be parties to some agreements, and not to others. In this way, the new regime is far more comprehensive than its predecessor.

Annex 4 which is collectively referred to as Plurilateral Trade Agreements is comprised of four Agreements: Agreement on Trade in Civil Aircraft,

Agreement on Government Procurement, International Dairy Agreement and International Bovine Meat Agreement. The Agreements of Annex 4 must be distinguished from those of the first three Annexes in that WTO Members may opt not to become parties to the Agreements of Annex 4.

Settlement of Disputes

The panel system continues to serve as the centrepiece of the machinery for settling disputes but under the new dispensation it has been considerably strengthened. Previously, the party against whom a complaint was brought could have frustrated the system by employing delaying tactics, or worse, by preventing the adoption of the panel report. By stating explicitly the deadlines for the establishment of panels, the submission of reports and the adoption of the panel's recommendations or rulings, the Understanding on Rules and Procedures Governing the Settlement of Disputes has made the rules on the settlement of disputes much stricter. However, the greatest improvement is in the area of the adoption of the panel's report. Under the old rule adoption of the report was on the basis of consensus, thereby making it possible for the party against whom the complaint was brought to block the adoption of the report. The new rule cures this defect by providing that the panel report shall be adopted unless the Dispute Settlement Body decides by consensus not to adopt the report, or if there is an appeal against the report.

Conclusion

The establishment of the World Trade Organization has clearly strengthened the international trade regime, but from the perspective of a developing country the question has to be asked whether the institutional improvement has resulted in redressing the imbalances in the international trading system. If it is the case that the changes identified above would result in a more efficient trading system and an eventual increase in the volume of trade, would that increase be shared equitably?

In the 1960s the criticism was levelled against GATT that it was a "rich man's club". The most-favoured-nation treatment clause which was its cornerstone was singled out for special attack because it failed to recognise special cases. Under the Marrakesh Agreement both the most-favoured-nation treatment and national treatment clauses continue to be the major principles. We must await the decisions in the cases before the panels to see whether or not they are applied in an equitable manner.