CHAPTER III

MULTILATERALISM IN PRACTICE

OVERVIEW

The year 1998 marked the fiftieth anniversary of the operation of the multilateral trading system. The General Agreement on Tariffs and Trade (GATT) established in 1947 and the World Trade Organization (WTO) that succeeded it in 1995 can be regarded as the primary entities providing the framework of this system. The establishment of the WTO by the Uruguay Round of Multilateral Trade Negotiations of the GATT marks a watershed in international trade regulation. For the first time an attempt was made to regulate virtually all aspects of trade in goods and services between nations by a democratic international organization with regulatory authority.¹

Since the beginning of the 1980s, the global economy has been going through several changes, the most pervasive of which have been in the realm of trade. The essential feature of these changes has been the marked opening up of their economies by developing countries, often dictated by the compulsions of the macroeconomic adjustment process they had undertaken during this period. Trade liberalization was a primary

objective that was pursued and was, by and large, considered as the panacea for developing countries in distress.²

The policy regime supporting this strategy was sought to be underlined by the multilateral trading system governed first by the GATT-47³ and now by the WTO. In the words of the WTO Director-General, Renato Ruggiero,

"It would be difficult to exaggerate the contribution of the multilateral system to the remarkable changes we have witnessed in the world economy over the last several decades. The walls between East and West have collapsed... Divisions between North and South have also blurred, as developing countries have increasingly abandoned import substitution and protectionism in favour of freer markets and open trade... If the challenge of the Cold War era was to manage a world divided, our challenge in the post-Cold War era will be to manage a world of deepening interdependence."⁴

³ A distinction is made between GATT-47 and GATT-94. GATT-47 refers to the original Treaty established in 1947, while GATT-94 incorporates all the provisions negotiated during the eight rounds of multilateral trade negotiations until 1994.
⁴ The WTO Director General in an address to the Royal Institute of International Affairs, London, on "The Multilateral Trading System at Fifty", 16 January, 1998. The copy of the address was made available at the WTO.
FRAMEWORK OF MULTILATERAL COOPERATION

It is a complex task defining multilateralism. Although multilateralism is a characteristic of the world economic system, it must ultimately reside in the behaviour of individual countries – the extent to which they behave in a multilateral fashion. According to a World Bank expert,\(^5\) multilateralism can be treated as a positive function of:

a) the degree to which discrimination is absent – in the proportion of trade partners that receive identical treatment; and

b) the extent to which the country’s trading regime approximates free trade.

The basic underlying philosophy of the multilateral trading system is that open markets, non-discrimination and global competition in international trade are conducive to the national welfare of all countries.

Multilateral cooperation among sovereign states occurs through the creation of institutions or regimes. Since a central authority is absent in international relations, political scientists have developed the concept of a regime, defined as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in

\(^5\) This definition has been put forth by World Bank economist L. Alan Winters.
PRINCIPLES OF MULTILATERALISM

The multilateral trading system is guided by certain principles:

1. Trade Without Discrimination – Most Favoured Nation Clause

The WTO (and previously the GATT) approach to trade liberalization has been essentially a multilateral approach. This has two aspects. Firstly, countries simultaneously negotiate reduction in tariffs. Countries conduct a series of bilateral negotiations with other members which all take place at the same time. Secondly, any tariff cut agreed between any pair of countries is automatically applied to all other members. Equally, any tariff increase imposed on imports from one particular country is applied equally to the same imports from all other countries. The essence of this approach contained in Article I of the GATT is the famous Unconditional Most-
favoured-nation (MFN) clause, which is regarded as the main plank of multilateralism. Paragraph I states:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the methods of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation... any advantages, favour, privilege or immunity granted by any other contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

It should be noted that Article I stipulates unconditional MFN.

“The principle of non-discrimination in international trade is widely recognised as being the best... basis upon which sound international trade relations can be built which can construct a stable international economic order.... The non-discrimination principle is enshrined in Most Favoured Nation (MFN) treatment of traded goods, that is, all imported goods, to receive the same tariff or non-tariff treatment irrespective of their country of origin...”

“Historically, the countries began using the MFN principle in the 19th century. All international trade treaty arrangements had MFN clauses. This clause took new forms: conditional and unconditional. The unconditional form obligated a treaty signatory to extend to its co-

signatory any trade concessions granted to third countries.... The conditional MFN clause granted the co-signatory opportunity to enjoy the same treatment as third country provided it offered the same compensation as the other country had given to obtain a favoured treatment".11

The inclusion of the rule enshrined in Article I in the GATT made it an obligation applicable to each signatory in its treatment of products of all other contracting parties, and consequently a multilateral obligation. More generally, by limiting the extent to which a country can play favourites, the MFN principle helps smaller trading nations realize their desire to be treated equally in their economic relations with their more powerful trading partners. Thus, non-discrimination contributes to a large extent to the regularity, orderliness and predictability which form the essence of a rules-based multilateral trading order.12

2. National Treatment

The principle defines that imported and locally-produced goods should be treated equally, at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.13 This principle of

12 ibid.
giving others the same treatment as one’s own nationals is found in all the three principal WTO agreements - Article 3 of GATT, Article 17 of GATS (General Agreement on Trade in Services) and Article 3 of TRIPS (Trade Related Intellectual Property Rights).\(^\text{14}\)

National treatment only applies once a product, service or item of intellectual property has entered the market.

3. Freer Trade

Lowering trade barriers is one of the primary means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively.\(^\text{15}\)

Since the GATT’s creation in 1947 there have been eight rounds of trade negotiations, focussing on lowering tariffs on imported goods. As a result of the negotiations, by the late 1980s industrial countries’ tariff rates on industrial goods had fallen steadily to about 6.3%. But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to new areas such as services and intellectual property.\(^\text{16}\)

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\(^{15}\) Francois and Shiells, n.2, p.33.

4. Promoting Fair Competition

The multilateral trading arrangement is sometimes described as a "free trade" institution, which is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More precisely, it is a system of rules dedicated to open, fair and undistorted competition.¹⁷

The rules of non-discrimination – MFN and national treatment – are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The non-discrimination principle plays an important economic role. It is an efficiency principle, both in the sense of ensuring access to low-cost supplies, and of allowing producers to sell in foreign markets without a policy-imposed disadvantage relative to other suppliers.¹⁸ Similarly, in a non-discriminatory policy environment, consumers can choose freely from among alternative foreign sources of supply. In a world of differentiated, discriminatory trade regimes, doing business across frontiers becomes more complex and time-consuming, implying additional costs for enterprises and impaired competitiveness.¹⁹

¹⁸ Dam, n.13, p.35.
¹⁹ Hudec, n.7, p.16.
HISTORY OF NON-DISCRIMINATION

1870 to Global Depression

The history of the adoption of non-discrimination as the basis for most international trade in the third quarter of the 19th century and the subsequent adherence to this principle up to 1929 provides the background to the collapse of the multilateral trading system during the 1930s, and the revival of the non-discrimination principle in the GATT-47.

Among the European countries that dominated 19th century international trade, 1870 marked a high point in free trade and in the absence of discrimination among trading partners. Most-Favoured-Nation (MFN) clauses were woven into commercial treaties to ensure that tariff reduction was accomplished by reducing discrimination among trading partners.\(^20\) The MFN clause took two forms: unconditional and conditional. The unconditional clause obligated a treaty signatory to extend to its co-signatory any trade concessions granted to third countries without reservation. The conditional MFN clause granted the co-signatory opportunity to enjoy the same treatment as a third country provided it offered the same compensation as the other country had given to obtain favoured treatment.

Whereas Europe by and large practised unconditional MFN, the United States attempted until after World War I to apply the clause conditionally.\textsuperscript{21} The pre-1914 period has been interpreted as an example of progressive bilateralism building towards globally free trade. However, in spite of the fact that international trade remained non-discriminatory between 1870 and 1914, signs of strain and fragility were accumulating.

As the World War I was coming to an end, the European allies were concerned with establishing closer postwar economic relations and discriminating against their wartime enemies. Meanwhile, the United States opted for unconditional MFN treatment as the basis of postwar trade, because it felt that its bargaining approach was ineffective in securing favourable access to export markets.\textsuperscript{22} At the same time, there were frequent deviations from non-discriminatory policies. France and Germany, after 1919 tried to use differentiated tariff treatment as a bargaining lever to open export markets. Gradually, with more countries viewing discriminatory trade policies as serving national purposes, the multilateral trading system went into severe decline.\textsuperscript{23}

\textsuperscript{21} ibid, p.141.
\textsuperscript{23} ibid, p.26.
In the 1930s

Between 1929 and 1939, government policies disrupted the flow of international trade, and turned it increasingly into bilateral channels. Nationalism, which was one of the causes of growing government intervention, was itself fanned by discriminatory trade measures contributing to a deterioration of international relations and ultimately to World War II.\textsuperscript{24}

By the late 1930s continental European countries had comprehensively rejected the MFN principle. Ironically, the initial impetus for the MFN clause falling into disrepute was actions by the USA and Britain – the two countries that had claimed continuing adherence to unconditional MFN treatment until the outbreak of the war. While the Americans embarked on the process of raising tariffs, Britain started to overtly use bargaining pressure to gain better treatment in British export markets.\textsuperscript{25}

The international monetary crisis from 1931 onwards provided an even greater stimulus for discriminatory trade policies than the increased protectionism of the 1930s had done. Faced with severe shortages of

\textsuperscript{24} ibid, p.31.

\textsuperscript{25} The analysis in this section is based on the readings of Kindelberger, n.22, pp.30-40; and Gardner Patterson, \textit{Discrimination in International Trade : The Policy Laws} (Princeton, 1966), pp.19-25.
means of payment for foreign transactions, countries introduced exchange controls, accompanied by other non-tariff barriers to trade.

A narration of the events of the decade is beyond the scope of this study, but broadly speaking, by 1934-35, even when the worst of the depression was over, there was no halt to the decline of multilateral non-discriminatory trade policies. Even though monetary stability had been restored, the administrative controls of international trade had become so well developed that most countries decided to maintain them as tools of national policy. At this stage though the USA, and to an extent, Britain, stood for liberalization and non-discrimination, their capacity for economic leadership had greatly eroded.

A fallout of the consequences of the 1930s trade policy was the perception among designers of the postwar international economic order that those policies had been disastrous. This perception moulded the Anglo-American plans for postwar institutions which were tailored to avoid repetition of the 1930s. While the International Monetary Fund's (IMF) mandate on convertibility (to encourage removal of exchange controls) was aimed at promoting freer trade, the emphasis in the GATT was on non-discriminatory trade policies: trade barriers were permissible, but the appropriate instrument was MFN tariffs.
POST WORLD WAR-II GLOBAL TRADING SYSTEM

The gathering of 23 nations in Geneva, Switzerland, for the signing of the General Agreement on Tariffs and Trade (GATT) in 1947 marked a revolution in multilateral trade negotiations. In contrast to the protectionist policies of the early 1930s and the complex bilateral trade negotiations of the immediate pre-war years, the pursuit of multilateralism represented a major departure from previous commercial relations between the industrialized countries.\(^{26}\)

Formally the GATT-47 was not an international organization (i.e. a legal entity in its own right), but an inter-governmental treaty. As a result, instead of member states, the GATT-47 had 'contracting parties'.

A fundamental perception of the founders of the GATT was that multilateral institutions facilitating cooperation between countries were important not only for straightforward economic reasons, but that the resulting increase in interdependence between countries would help to reduce the risk of war. The expected positive impact on real incomes associated with trade liberalization and non-discriminatory access to markets was expected to reduce the scope for political conflicts; while the increase in transparency and the availability of a forum in which to discuss

potential or actual trade conflicts was expected to reduce the probability of these spilling over into other spheres.

The Preamble of the GATT states that the objectives of the contracting parties include "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."\(^{27}\) It goes on to say that reciprocal and mutually advantageous arrangements involving a substantial reduction of tariffs and other barriers to trade as well as the elimination of discriminatory treatment in international trade will contribute to the realization of these objectives. Nowhere is there any mention of free trade as an ultimate goal. Instead, the role of GATT was to facilitate the reduction of barriers of trade and ensure greater equality with respect to conditions of market access for contracting parties.

The GATT emerged from the post war negotiations with a mandate to establish an International Trade Organization (ITO). The negotiations on the charter of such an organization, although concluded successfully in Havana in 1948, did not lead to the establishment of the ITO because the US did not ratify the agreement. The GATT had been negotiated in 1947, before the ITO negotiations were concluded. As the countries involved in

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\(^{27}\)ibid.

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the 1947 exchange of tariff reductions were anxious that their implementation not be conditional upon the conclusion of the ITO talks, the GATT was created as an interim agreement. As the ITO never came into being, the GATT was the only concrete result of the negotiations. Although the GATT incorporated many of the specific provisions of the ITO, having been conceived as a temporary trade agreement it lacked an institutional structure. In the first years of its operation it did not exist as an entity except once or twice a year when formal meetings of the contracting parties were held. Its organizational structure emerged only gradually.28

*The major innovation of the GATT was to incorporate unconditional MFN into a multilateral framework.* As stated earlier, Article I of the GATT requires the extension of the principle of non-discrimination to all fellow-signatories. However, the GATT did not exclude all discriminatory trade policies. The 'grandfather' clause permitting continuation of existing preferential arrangements, and the customs union issue set out in Article XXIV sanctioning customs unions and free trade areas, are the more significant exceptions to the GATT's non-discrimination principle.29

28 ibid.
29 Article XXIV and rules on customs unions and free trade areas have been discussed in detail in chapter IV of the study.
As of the early 1990s, a well exercised GATT machine existed, allowing contracting parties to manage developments in the trading system, including a capacity for surveillance of trade policies and assisting conflict resolution through consultations, negotiations, mediation and dispute settlement. The secretariat that supported these interactions was formerly known as the Interim Commission for the International Trade Organization (ICITO), created during the negotiations on the ITO. It was technically a United Nations body, as the ITO negotiations occurred under UN auspices.\(^3^0\) But because the ITO never came into existence, the formal relationship between the GATT (a treaty) and the UN was always tenuous.

Over the more than four decades of its existence, the GATT system evolved into a de facto world trade organization. Its fairly complex basic legal text was extended or modified by numerous supplementary codes and arrangements, interpretations, waivers, reports by dispute settlement panels and council decisions.\(^3^1\) GATT’s early years were dominated by accession negotiations, a Review Session in the mid-1950s that led to modifications to the Agreement, and the creation of the European Economic Community (EEC) in 1957. Starting in the mid-1960s, periodic rounds of multilateral trade negotiations (MTNs) were held that gradually

\(^3^0\) Pomfret, n.11, p.21.

\(^3^1\) John H. Jackson, *Restructuring the GATT System* (London, 1990), p.36.
expanded the scope of the GATT to a large number of non-tariff policies, and eventually led to the creation of the WTO.

EVOLUTION FROM THE GATT TO THE WTO

GATT - WTO CHRONOLOGY

1947 The Birth of GATT On October 30, 1947, the GATT was signed by 23 nations - twelve developed and eleven developing economies - in Geneva. The Agreement contained tariff concessions agreed to during the first multilateral trade negotiations and a set of rules designed to prevent these concessions from being frustrated by restrictive trade measures.

The Genesis of GATT In 1946, the newly-created Economic and Social Council of the United Nations called a conference to consider the creation of the International Trade Organization (ITO) which was envisaged as the final leg of a triad of post-war economic agencies (the other two were the International Monetary Fund and the International Bank for Reconstruction and Development). A preparatory committee was established to draft the ITO charter.

During 1946-1947, the committee worked on the draft charter. However, independent of this official task under the UN mandate, the committee members conducted tariff-cutting negotiations among themselves in advance of the ITO. These negotiations resulted in about 45,000 tariff concessions affecting some US$ 10 billion of world trade.

The committee members also agreed to protect the value of the tariff concessions by early acceptance of some of the trade rules of the draft ITO charter. Thus, tariff concessions and trade rules together became known as the General
Agreement on Tariffs and Trade which was signed on 30 October 1947 by 23 countries as an interim measure. In November 1947, delegations from 56 countries met in Havana, Cuba, to consider the ITO draft as a whole. After long and difficult negotiations, some 53 countries signed the Final Act authenticating the text of the Havana Charter in March 1948. There was no commitment, however, from governments to ratification and, in the end, the ITO was stillborn, leaving GATT as the only international instrument governing the conduct of world trade.

1948 Entry into Force On 1 January 1948, GATT entered into force. The 23 founding members were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and the United States.32

The first real business of the GATT was conducted by the first session of contracting parties which began on 28 February 1948 and ended on 20 March 1948 in Havana, Cuba. The secretariat of the Interim Commission for the ITO, which served as the ad hoc secretariat of GATT, moved from New York to Geneva in 1948.

1949 Second Round at Annecy33 During the second round of trade negotiations held from April to August at Annecy, France, the contracting parties exchanged some 5,000 tariff concessions. At their third session, they also dealt with the sessions of ten more countries.

32 This part has been summarized from Jackson, n.26.

33 The brief history of the GATT Rounds of Negotiations has been summarized from Jakson, n.26; and Pomfret, n.11.
1950 Third Round at Torquay From September 1950 to April 1951, the contracting parties exchanged some 8,700 tariff concessions in the English town, yielding tariff reductions of about 25 per cent in relation to the 1948 level. Four more countries acceded to GATT. During the fifth session of the Contracting Parties, the United States indicated that the ITO Charter would not be re-submitted to the US Congress; this, in effect, meant that ITO would not come into operation.

1956 Fourth Round at Geneva The fourth Round was completed in May and produced some $2.5 billion worth of tariff reductions. At the beginning of the year, the GATT commercial policy course for officials of developing countries was inaugurated.

1960 The Dillon Round The fifth Round opened in September and was divided into two phases: the first was concerned with negotiations with EEC member states for the creation of a single schedule of concessions for the Community based on its Common External Tariff, and the second was a further general round of tariff negotiations. Named in honour of the US Under-Secretary of State Douglas Dillon who proposed the negotiations, the Round was concluded in July 1962 and resulted in about 4,400 tariff concessions covering $4.9 billion of trade.

1961 The Short-term Arrangement covering cotton textiles was agreed as an exception to the GATT rules. The arrangement permitted the negotiation quota restrictions affecting the exports of cotton-producing countries. In 1962 the "Short-term" Arrangement became the "Long-term" Arrangement lasting until 1974 when the Multifibre Arrangement entered into force.

1964 The Kennedy Round Meeting at Ministerial level, a Trade Negotiations Committee formally opened the Kennedy Round in May. In June 1967, the Round's final Act was signed by some 50 participating countries which together accounted for
75 per cent of world trade. For the first time, negotiations departed from the product-by-product approach used in the previous Rounds to an across-the board or linear method of cutting tariffs for industrial goods. The working hypothesis of a 50 per cent target cut in tariff levels was achieved in many areas. Concessions covered an estimated total value of trade of about $40 billion. Separate agreements were reached on grains, chemical products and a Code on Anti-Dumping.

1966 A New Chapter The early 1960s marked the accession to the General Agreement of many newly independent developing countries. In February, the Contracting Parties, meeting in a special session, adopted the text of Part IV on Trade and Development. The additional chapter to the GATT required developed countries to accord high priority to the reduction of trade in services to products of developing countries. A Committee on Trade and Development was established to oversee the functioning of the new GATT provisions. In the preceding year, GATT had established the International Trade Centre (ITC) to help developing countries in trade promotion and identification of potential markets. Since 1968, the ITC has been jointly operated by the GATT (and now the WTO), and the UN Conference on Trade and Development (UNCTAD).

1973 The Tokyo Round The seventh Round was launched by Ministers in September at the Japanese capital. Some 99 countries participated in negotiating a comprehensive body of agreement covering both tariff and non-tariff matters. At the end of the Round in November 1979, participants exchanged tariff reductions and bindings which covered more than $300 billion of trade. As a result of these cuts, the weighted average tariff on manufactured goods in the world’s nine major industrial markets declined from 7.0 to 4.7 per cent. Agreements were reached in
the following areas: subsidies and countervailing measures, technical barriers to trade, import licensing procedures, government procurement, customs valuation, a revised anti-dumping code, trade in bovine meat, trade in dairy products and trade in civil aircraft. The first concrete result of the Round was the reduction of import duties and other trade barriers by industrial countries on tropical products exported by developing countries.34

1974 On 1 January 1974, the Arrangement Regarding International Trade in Textiles, otherwise known as the Multifibre Arrangement (MFA), entered into force. It superseded the arrangements that had been governing trade in cotton textiles since 1961. The MFA sought to promote the expansion and progressive liberalization of trade in textile products while at the same time avoiding disruptive effects in individual markets and lines of production. The MFA was extended in 1978, 1982, 1986, 1991 and 1992.

1986 The Uruguay Round GATT Trade Ministers meeting at Punta del Este, Uruguay, launched the eighth Round of trade negotiations on 20 September. Envisaged to last four years, negotiations were held in Geneva, Switzerland, and continued for some seven and a half years covering the most wide-ranging and ambitious agenda of any Round so far.35

1993 Successful conclusion of the Uruguay Round negotiations on 15 December 1993 in Geneva, Switzerland.

35 GATT, n. 14, Summary.
1994 The Final Act of the Uruguay Round signed by Ministers on 15 April 1994 in Marrakesh, Morocco. Results included average tariff cuts of 40% on industrial products; an average increase in the percentage of tariff bindings from 21% to 73% (for developing countries), from 78% to 99% (for developed countries), and from 73% to 98% (for transition economies); a comprehensive programme of agricultural reform, including liberalization commitments on tariffs, domestic support and export subsidies, and the replacement of all quantitative restrictions and other non-tariff measures by tariffs; a phase-out of export restrictions and enhanced market access for textiles and clothing; strengthened agreements on safeguards, technical barriers, customs valuation, import licensing, state-trading, subsidies, and anti-dumping and countervailing measures.\(^{36}\) The results also produced new agreements on such areas as trade in services, intellectual property rights, sanitary and phytosanitary measures, and trade-related investment measures. The Uruguay Round results also transformed the provisional multilateral trading system which had existed under the GATT into the permanent World Trade Organization with a significantly strengthened legal mechanism for resolving trade disputes multilaterally.\(^ {37}\)

1995 Entry into force of the WTO on 1 January 1995

First WTO Ministerial Conference held in Singapore, 9-13 December 1996. Among the major conclusions of the conference was the establishment of three working groups, respectively, on trade and investment, trade and competition policy, and transparency in government procurement. Of particular importance (to this study) is

\(^{36}\) ibid.

the view taken by the Conference that regional trade arrangements are compatible with the multilateral system.\textsuperscript{38}

**MULTILATERALISM UNDER THE NEW WORLD TRADING ORDER**

The Uruguay Round of Multilateral Trade Negotiations elevated multilateralism to a new height. The Marrakesh Agreement which was the result of the longdrawn eighth round of multilateral trade negotiations embodies some fundamental norms governing the multilateral regime.

A. In search of a stable and predictable trading environment, it established a few fundamental norms - the most important being the establishment of a free non-discriminating global trading order.

B. The Uruguay Round encompassed a large number of vital sectors of the world economy which were not brought under the negotiations and agreements earlier.\textsuperscript{39} For the first time it brought agriculture under the discipline of GATT. It established separate rules and regimes in the new areas of Trade-Related Intellectual Property Rights (TRIPS) Trade-Related Investment Measures (TRIMs), and Services. The Final Act of the Uruguay Round includes as many as 19 new instruments constituting Multilateral Agreements on Trade in Goods, four Plurilateral Trade Agreements, an Agreement each on


\textsuperscript{39} GATT, n.14
TRIPS and Services, an understanding on Dispute Settlement, and an Agreement on Trade Policy Review Mechanism, among numerous Decisions and Declarations adopted at the Marrakesh Ministerial Meeting.

C. All the agreements dealing with the diverse subjects have been treated as a 'single undertaking', i.e., all the major agreements reached covering goods (including agriculture), services, intellectual property protection, and investment, together form an integrated system of rights and obligations.\(^{40}\) No single country could opt out of any specific segment as was the case previously. It was a grand tradeoff that individual signatories made.

D. According to the Marrakesh Agreement, the Most-Favoured Nation treatment was not confined to merchandise trade alone. This principle was established right across various agreements.

i) Under the Marrakesh Agreement, the GATT-47 was brought in with certain modifications. The resulting GATT-94 enshrined in itself the original principles of MFN and National Treatment in the area of merchandise trade.\(^{41}\)

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\(^{40}\) GATT, *Analysis of the Draft Final Act of the Uruguay Round, with Special Attention to the Aspects of Interest to Developing Countries* (Geneva, 1993), p.xi.

ii) Similarly, in the Services sector, the agreement which resulted from the Uruguay Round, known as the General Agreement on Trade in Services, provides a multilateral framework of principles and rules which should govern trade in services under conditions of transparency and progressive liberalization. It spells out certain obligations such as extension of MFN principle, maintenance of transparency, and also a commitment for liberalization.42

iii) In the field of investment measures, the Agreement on TRIMs has incorporated the goals of extending MFN and National Treatment principles to foreign investment.43

e) Yet another important development is the decision to integrate the trade in textiles into the discipline of multilateral trade. This trade was governed by agreements between the exporters and importers, violating the fundamental principles of free non-discriminatory trade. So long the trade in textiles was, in fact, managed trade.44

f) The issue of Trade and Environment has not resulted in a formal Agreement, but has emerged as the most important subject of negotiations in the multilateral forum.

43 n. 40, p.4.
44 UNCTAD, n. 41, p.40.
In order to implement these and other agreements the World Trade Organization has been established.

TOWARDS A WORLD TRADE ORGANIZATION

Although the GATT-47 progressively acquired many of the attributes of an international organization, it was increasingly felt in the 1980s that it was not keeping up with the rapid changes in the global economy, and required strengthened dispute-settlement and transparency mechanisms. Further, the GATT-47 had no enforcement power. While this was reflected in the agenda of the Uruguay Round, the Ministerial Declaration establishing the Round’s agenda did not call for the creation of a world trade organization. Instead, it was agreed that the Round would be a ‘single undertaking’, with all its agreements applying to all GATT-47 contracting parties. The suggestion to establish a Multilateral Trade Organization (MTO) was put up by Canada in 1990 and supported by the European Union.45 An important motivation to establish an MTO was to have a single institutional framework encompassing the modified GATT, its sister bodies on services (GATS) and intellectual property (TRIPS), and all other agreements and arrangements concluded under the auspices of the Uruguay Round. The United States initially opposed the idea, but after

further negotiations on the substance of the new organization, agreed to
the framework that currently exists, including the change in nomenclature.
Predictably, the US Congress was suspicious of any limitations to its
sovereign powers in trade policy, but during the ratification debate it
became clear that the establishment of the WTO would not do much to
change the status quo as far as the infringement of sovereignty was
concerned. The GATT-47 was a binding international treaty, and most of
the institutional aspects of the WTO already existed under the GATT.

Thus, it was only towards the end of the Uruguay Round of
Negotiations that there was a proposal for the establishment of a
comprehensive overarching organization to administer all the agreements
reached during the negotiations.

The agreement establishing the World Trade Organization entered
into force on 1 January 1995. In many respects, the new trading
institution is very much like the GATT-94 regime. The WTO embodies 50
years of multilateral trade negotiations in the GATT-47, which liberalized
trade and established a substantial body of trading rules.

THE SCOPE, FUNCTIONS, AND STRUCTURE OF THE WTO

The principal institution with responsibility for the multilateral trading
system, the WTO has the same status as institutions such as the World

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46 ibid.
Bank and the IMF. It has legal characteristics and has been accorded privileges and immunities similar to those accorded to the specialized UN agencies. It is headed by a Ministerial Conference of all Members, meeting at least once every two years. Headquartered in Geneva, Switzerland, the WTO is a one-country/one vote body.\(^{47}\) There is a Director-General,\(^{48}\) who heads the Secretariat and the General Council, composed of representatives of each member state, which meets as required to take action on issues brought forward by either the Trade Policy Review Body or the Dispute Settlement Body (DSB). The Trade Policy Review Body, the General Council, the DSB, all report to the Ministerial Conference. In addition, there is a Council for Trade in Goods, a Council for Trade in Services, and a Council for TRIPS, which operate under the aegis of the General Council.\(^{49}\) The Figure 3.1 shows the organization structure of the WTO.


\(^{48}\) The present incumbent is also the first Director General of the WTO. Renato Ruggiero, an Italian diplomat, assumed office on 1 May 1995.

\(^{49}\) WTO, n.47.
FIGURE 3.1: ORGANIZATION TREE OF THE WTO

WTO

Ministerial Conference*

General Council
Dispute Settlement Body**
Trade Policy Review Body**

Committee on Trade and Development

Committee on Trade in Services

Council for TRIPs

Committee on Budget, Finance and Administration

Committee on Trade and Environment

Committee on Trade in Financial Services

Committee on Regional Trade Agreements/CRTA

1. Committee on Agriculture
2. Textile Monitoring Body
3. Committee on Technical Barriers to Trade
4. Committee on TRIMs
5. Committee on Anti-Dumping Practices
6. Committee on Rules of Origin
7. Committee on Customs Valuation
8. Committee on Subsidies and Countervailing Measures
9. Committee on Safeguards

* The Historical Conference and all other bodies except the Textile Monitoring Body consist of the entire membership of the WTO.
** The General Council itself will meet as the Dispute Settlement Body and the Trade Policy Review Body.

The WTO is charged with providing "the common institutional framework for the conduct of trade relations among its Members in matters related to the Agreements and associated legal instruments..."\(^{50}\)

The WTO has the following principal functions:\(^{51}\)

i) It is charged with facilitating the implementation and operation of the Multilateral Trade Agreements;

ii) Providing a forum for negotiations on already covered or new issues;

iii) Administering the understanding on dispute settlement and the Trade Policy Review Mechanism (TPRM);

iv) Cooperating with the World Bank and the IMF to achieve "greater coherence in global economic policy-making."

The main actors in day-to-day activities are the delegations of Members. The GATT-47, and the WTO that succeeded it, are based on collective input from a large group of constantly changing civil servants who deal with trade issues in each of the Member States. Initiations for multilateral trade negotiations, monitoring of trade policies, and settlement of disputes are largely the responsibility of WTO Members themselves. The Secretariat provides technical and logistical support, including organizing

\(^{50}\) Article II(1) of the WTO Articles of Agreement, *Uruguay Round : Final Act* (Marrakesh, 15 April 1994).

\(^{51}\) Article III (5) of the WTO Articles of Agreement.
meetings of governing bodies and preparing background documentation requested by delegations. It also assists the dispute settlement process, provides legal services when requested to do so, and publishes studies and trade policy reports. The Director-General, the head of the Secretariat, is in some sense the guardian of the collective interest of the Member States. The WTO's rules and procedures allow the Director-General to act as a broker – not a decision-maker – in many situations.52

DECISION-MAKING

Some criteria useful in determining a country's influence in the WTO system are: its share of world trade (which also determines budget contribution); its trade dependence or 'openness' (the ratio of exports and imports to GDP); and the absolute size of its market. In principle, a country's trade policy stance is irrelevant: free-traders do not have any more say in the WTO than countries with highly protectionist regimes.53 The major players are therefore the EU, Japan, and the USA. The EU is a major player because individual EU Member States do not have sovereignty over trade policy: this has been delegated to the Commission of the European Communities. For more specific issues in the WTO, the level of influence is also determined by the importance of the matter for the

52 WTO, n.47.
country. For example, Argentina, a relatively small trading nation, is an important meat exporter and has more influence on decisions concerning international trade in bovine meat than on other topics. Issues that arise are often product-specific. What matters then is a country's share of world trade in the product involved. This product-specificity explains much of the bilateral or plurilateral nature of the interactions that take place.\footnote{ibid., p.10.}

TRANSPARENCY: NOTIFICATION AND SURVEILLANCE

Transparency at the multilateral and national levels is essential to reduce domestic pressures for protection and to enforce agreements.\footnote{GATT, *Trade Policies for a Better Future: Proposals for Action* (Geneva, 1985), p.286.} Transparency provisions of the WTO relate to both the acts of the WTO itself, and the actions of its Members. As far as the WTO itself is concerned, most important WTO documents are made public.\footnote{Exceptions in the past have been unadopted panel reports. Another set of documents that have traditionally not been published are the results of tariff renegotiations. Moreover, public access to the Secretariat's integrated database of Members' tariff schedules and other trade measures is also restricted.} WTO decisions, panel findings, and other major documents of the WTO bodies are published in a series entitled *Basic Instruments and Selected Documents* (BISD) edited by the Secretariat, Geneva. The Secretariat also prepares regular newsletters and publishes ad hoc studies on particular aspects of the multilateral trading system.
As regards transparency of Members’ policies, the WTO requires that all trade laws and regulations are published. Article X of the GATT, Article III of the GATS and Article 63 of the TRIPS Agreement all require that relevant laws, regulations and judicial decisions, and administrative ruling are made public.

The WTO also has important surveillance activities. It periodically reviews the trade-policy and foreign-trade regimes of Members through its Trade Policy Review Mechanism (TPRM). Matters of interest to developing countries are reviewed in the Committee on Trade and Development. Multilateral surveillance of trade restrictions for balance-of-payments purposes takes place in the Committee on Balance of Payments Restrictions. The Textiles Surveillance Body reviews bilateral agreement on trade in textiles, and the Textile Committee oversees the phasing out of the Multifibre Arrangement (MFA). The Committee on Regional Trade Agreements reviews regional trade agreements under the aegis of Article XXIV.57

DISPUTE SETTLEMENT AND ENFORCEMENT OF RULES

The effective resolution of trade disputes is vital for the smooth functioning of the multilateral trading system. The growing number of trade

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57 The various bodies have been outlined in the Organization Tree of the WTO (Fig.3.1).
disputes in the 1980s and early 1990s was variously attributed to the intensification of trade conflicts resulting from changing patterns of comparative advantage, in conjunction with the existence of vaguely worded GATT provisions and differences in their interpretation.\textsuperscript{58} Dispute-settlement procedures may be invoked whenever a Member believes that an action by another Member has "nullified or impaired" a concession that was negotiated previously (i.e. a tariff binding), or has broken a WTO rule.

Complaints may take three forms.\textsuperscript{59}

i) The first is a 'violation' complaint, which consists of a claim that one or more WTO disciplines has been violated (example, non-discrimination).

ii) Second, Members may argue that although no specific WTO rules are violated, a government measure none-the-less nullifies a previously granted concession.

iii) The third possibility is a so-called 'situation' complaint, under which a Member may argue that 'any other situation' not captured by the violation or non-violation options has led to a nullification or impairment of a negotiated benefit.

\textsuperscript{58} Minyard, n.53, p.19.

Disputes arising from any WTO agreement are dealt with by the Dispute Settlement Body (DSB), which has the authority to establish panels, adopt panel reports, scrutinize the implementation of recommendations, and authorize retaliatory measures if necessary. The dispute-settlement mechanism covers not only trade in goods, but also trade in services and intellectual property. The same procedures are used for settling disputes across all issues – the WTO has established a unified dispute-settlement mechanism.

Dispute settlement under the WTO is in principle, more timely, automatic, and binding than under the GATT, although to a large extent it codified existing practices. The strengthened dispute settlement system of the WTO has implications for the manner in which Members apply the provisions to regional agreements.

The WTO has introduced greater multilateral curbs on unilateral trade action in return for a much stronger multilateral dispute mechanism. Governments have agreed to use multilateral remedies wherever these are available. This considerably narrows the scope for unilateral action by powerful traders. This is in large part because the WTO’s coverage of issues is much wider than that of the GATT-47 – more disputes can therefore be brought to the multilateral forum. However, if an issue is not
subject to multilateral rules, the use of unilateral sanctions is not formally constrained by the WTO.\textsuperscript{60}

**ACCESSION**

GATT-47 accession procedures have been carried over to the WTO, the main changes being that the deliberations are extended to Services and TRIPS as well. The WTO states that "any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations... may accede to the Agreement, on terms to be agreed between it and the WTO".\textsuperscript{61} The procedure of accession can be summarized as follows:\textsuperscript{62} The government communicates its desire to join the WTO by writing a letter to this effect to the Director-General of the WTO Secretariat. In practice, it would usually have requested observer status before this point. The General Council then establishes a working party consisting of interested countries to examine the application.

The government seeking accession must then submit a memorandum describing in great detail its trade regime. On the basis of this memorandum, members of the working party discuss and clarify the functioning of the trade regime with the applicant, focusing in particular

\textsuperscript{60} ibid.

\textsuperscript{61} Article XII, WTO Articles of Agreement.

\textsuperscript{62} This section has been summarized from a WTO Secretariat document on Accession Procedures, WT/Doc/ 28-96, 1996.
on its consistency with multilateral rules. The country seeking accession usually has to liberalize access to its markets. Accession tariff negotiations are held between the acceding government and all WTO members that are interested in enhancing their access to the markets of the country seeking membership. Accession must be approved by a two-thirds majority of existing Members.

**STRENGTHS AND ACHIEVEMENTS**

In considering how the trading system can contribute to meeting the challenges facing nations, it is important to look at what the system has achieved so far.

a) The fundamental strength of the system was, and remains, its rule-based nature. Like the GATT before it, the WTO rests on contractually binding commitments negotiated and undertaken freely by governments and ratified through their national legislative processes. From this viewpoint, it is a transparent and democratic system.

b) The principle of non-discrimination – resting on the twin pillars of National Treatment and MFN has ensured the continuity of a fairly stable multilateral trading system.
The GATT/WTO trading system has contributed to an extraordinary period of economic growth and increased prosperity. Trade has expanded faster than output by a significant margin over the last five decades. On an annual average basis, merchandise exports have grown by 6 per cent in real terms from 1948 to 1997. By comparison, total output expanded at an annual average rate of 3.8 per cent in capita terms. A similar picture of intensified international economic engagement is readily discernible from figures on foreign direct investment (FDI). Data are not available for the whole period from 1958, but annual FDI flows expanded sixteen-fold between 1973 and 1996, from US$ 21.5 billion to US$ 350 billion, an annual average growth rate of 12.7 per cent. Accumulated FDI stocks jumped from US$ 165 billion at the end of 1973 to US$ 3,205 billion in 1996, nearly a twenty-fold increase.

The significant gains in income growth, job creation and prosperity that underlie the statistics mentioned above are in part attributed to the success of the multilateral treading system in lowering trade barriers. Since negotiations began in 1947, average tariffs among industrialized countries have fallen from high double-digit levels to

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64 ibid., p.56.
less than 4 per cent. Most non-tariff border restrictions have also been abandoned. The system protects these market access gains through rules encompassing such matters as technical standards, regulations, and subsidy practices. Since the creation of the WTO, trade liberalization efforts have been extended to trade in services, covering both cross-border transactions and the rights of enterprises to establish a commercial presence through direct investment in foreign markets.

d) The system has widened the circle of participation in the global marketplace. While the early rounds of multilateral trade negotiations, up to the Dillon Round in 1961, typically involved some 20 to 30 countries, the Kennedy Round (1964-67) involved over 60 countries, the Tokyo Round (1973-79) more than 100 countries, and the Uruguay Round (1986-94) had 128 participants. The WTO's membership at 132 countries could potentially grow to over 160 early in the next century. One-third of the largest trading countries today are developing countries. The end of the Cold War reflected and reinforced this geographical extension in participation. The walls between the East and the West collapsed, in part, because

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66 See Appendix IV for a list and geographical spread of WTO Member States.
centrally-planned systems could not meet the challenges posed by free markets and technological systems. Divisions between North and South have blurred, as developing countries have increasingly abandoned inward-looking import substitution in favour of more open trade and freer markets. The fact that the two largest countries outside the system, China and Russia, have made WTO membership one of their key policy objectives is a striking testament to the system's gravitational pull.

e) The dispute settlement system has demonstrated the willingness of governments to respect the rules. The record in this respect has been impressive. Over the past fifty years, the vast majority of cases brought have been settled, either on a bilateral basis before final multilateral determination, or through acceptance of a panel ruling. Dispute settlement arrangements were significantly strengthened in the Uruguay Round, introducing greater automaticity and clearer time frames into the procedures, eliminating the scope for interested parties to block the adoption of panel findings, and establishing an appeals body. These new arrangements have further strengthened the confidence of Members in the system, allowing small and/or developing economies the opportunity to obtain a fair hearing without being subject to threats of linkage or reprisal. This makes
the refusal of any major nation to abide by a WTO ruling politically unacceptable, and brings some degree of parity to international trade for the first time in history. As of 1998 over 119 cases had been presented to the WTO, compared to just over 300 cases throughout the life of the GATT, from 1948 to 1994.\textsuperscript{67} Moreover, increasing number of developing countries are making use of dispute settlement procedures.

f) The multilateral trading system has broadened and deepened its agenda to take account of new realities in international economic relations. From its early focus on tariff reduction, the removal of quantitative import restrictions, and the development of rules on such matters as import licensing, customs valuation, and standards, the rules of the system have increasingly extended to the treatment of foreign persons and companies as well as foreign goods and services. The incorporation of trade in services brought an investment dimension into the system, and rules have been developed for the protection of trade-related intellectual property rights.

\textsuperscript{67} The figure was provided by the Economic Research and Analysis Division, WTO in October 1998.
WEAKNESSES

a) A weakness that the WTO shares with its progenitor, the GATT, is the relative unenforceability of its conflict resolution decisions. Merely allowing an aggrieved member to institute retaliatory sanctions in a sector in which it may or may not have any leverage is insufficient.

b) Another weakness is its relative insensitivity to the fears held by many members regarding the loss of national sovereignty under the WTO. Such speeches by the Director-General to the UNCTAD stating that the WTO is “no longer writing the rules of interaction among separate national economies. We are writing the constitution of a single global economy” help fuel the fear of a WTO hegemony.

Furthermore, a July 1996 decision in the WTO to make the summaries and minutes of all WTO meetings classified documents belies the “transparency” motif of the organization.

OPPORTUNITIES

The World Trade Organization is the first truly worldwide trade organization. It has supplanted the GATT accords and although to an

extent politicized, is the closest to a democratic international organization. John H. Jackson has likened the multilateral trading system to a "constitution" for the world economy. If the WTO can avoid the attempts to polarize it into a "developed nations" versus "developing nations" forum and the perception that it seeks to establish economic hegemony by undermining the sovereignty of its member nations, it has the potential to play a pivotal role in the advancement of global trade.

Along with all the provisions looked at for strengthening the multilateral system, there is a strong requirement for examing the rules and provisions on regional trade agreements. This is dealt with in the following chapter.

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69 Jackson, n.31, p.4