

## II Evolving Rules for World Trade

The principal features of each of the decisions and agreements emerging from the Tokyo Round of Multilateral Trade Negotiations (MTN) following their conclusion in 1979 have been described elsewhere.<sup>3</sup> This section assesses these results and describes the main issues affecting the implementation of these codes and agreements immediately after their entry into force.

### Application of the MTN Results

On January 1, 1980 the Tokyo Round tariff reductions began to be implemented. The total agreed tariff reduction of about one third, which will reduce the weighted average tariff rate on manufactured products from 7 per cent to about 4.7 per cent for the nine major industrial markets, will become effective by January 1, 1987. Several Tokyo Round agreements on nontariff measures also took effect on January 1, 1980: (1) the Code on Subsidies and Countervailing Duties; (2) the Agreement on Technical Barriers to Trade; (3) the Agreement on Import Licensing Procedures; (4) the Revised Antidumping Code; (5) the Arrangement Regarding Bovine Meat; (6) the International Dairy Arrangement; and (7) the Agreement on Trade in Civil Aircraft. The Agreement on Government Procurement and the Customs Valuation Code both entered into force on January 1, 1981.<sup>4</sup> Appendix I contains a list of the countries adhering to each of the MTN codes.

<sup>3</sup> The Tokyo Round of Multilateral Trade Negotiations, initiated in September 1973 at an ad hoc conference of ministers in Tokyo, was conducted within the GATT framework. In November 1979, the results were brought formally within the GATT framework, marking the conclusion of the Tokyo Round. The main issues in the Tokyo Round of negotiations are summarized in two articles by S. J. Anjaria (December 1975 and June 1976); the main Tokyo Round results are described in two reports by the Director-General of the GATT (April 1979 and January 1980).

<sup>4</sup> However, the United States and the European Community have applied the provisions of the Customs Valuation Code from July 1, 1980. Also included in the Tokyo Round package of agreements were tariff and nontariff concessions by industrial countries on imports of tropical products from developing countries. While most industrial countries implemented their concessions and contributions on tropical products in 1976-77, the U.S. concessions took effect from 1980 on.

Most of the codes or agreements on nontariff measures provide for committees of code signatories to oversee the implementation of their provisions; the work of the committees will therefore be crucial for the successful implementation of the codes, many of which contain provisions that could be interpreted either on the liberal or the restrictive side. The initial period after the entry into force of these agreements was devoted mainly to organizational matters, but a number of crucial questions were also brought before some of the new committees. Several of these issues are reviewed below.

### Rules on Subsidies

The most important changes in national subsidization and countervailing trade policies resulting from the Code on Subsidies and Countervailing Duties are: (1) introduction by the United States of a "material injury" criterion in countervailing duty cases;<sup>5</sup> (2) recognition by code signatories that subsidization may cause injury or serious prejudice to the industries of other countries; and (3) recognition that subsidies other than export subsidies are widely used as policy instruments to promote social and economic objectives.

One of the first substantive cases under the new code was a complaint by India about the U.S. levy of a countervailing duty against India without applying the material injury test. The United States explained that this action reflected its general policy of not extending the benefits of the injury test to countries that did not

<sup>5</sup> As background to this development, it should be noted that, although the General Agreement permits GATT members to impose countervailing duties only when subsidized exports "cause or threaten material injury" to domestic industry (Article VI:6), the United States had not applied this criterion to dutiable imports until the conclusion of the MTN. Its domestic legislation predated the General Agreement and hence was exempted under the "existing legislation" clause of the Protocol of Provisional Application of the GATT. As a result of the MTN, the U.S. legislation was amended to conform to the "material injury" criterion for imposition of countervailing duties. This discussion is based in part on Curzon (September 1980).

increase their discipline of export subsidization practices. This matter was raised in the Committee on Subsidies and Countervailing Measures, set up to oversee the application of the code, and later in the GATT Council. When bilateral consultations between India and the United States could not resolve the dispute, a GATT panel was established in December 1980 to study the matter. Apart from the specific issues, the outcome of this dispute could have broad implications for issues such as: (1) the relationship between provisions of the subsidies code itself; (2) the rights of contracting parties<sup>6</sup> under the General Agreement on Tariffs and Trade and under a particular code or understanding; (3) the scope of application of the GATT nondiscrimination clause; and (4) developing countries' rights and obligations in the context of the MTN results. In addition, this case could serve as a test of the strengthened dispute settlement procedures agreed under the MTN. Some developing countries have pointed out in GATT forums that the future adherence of developing countries to the MTN codes could be influenced by the outcome of this case.

A second set of issues concerns subsidized export credits. It has been generally recognized that export subsidization may be direct or indirect, possibly involving granting of export credits at subsidized interest rates. In 1976, the OECD Consensus on Export Credit Terms was adopted for the purpose of avoiding destructive competition in official support of export credits, and this was superseded in April 1978 by the OECD Arrangement on Guidelines for Officially Supported Export Credits, which lays down minimum rates of interest to be charged, the minimum percentage of down payment, and maximum periods of repayment. The Arrangement does not apply to agricultural commodities, aircraft, nuclear power plants, and military equipment; it also excludes ships, for which there is a separate OECD understanding on export credits. With the sharp rise in interest rates in late 1979 and early 1980, the minimum interest rates agreed in the Arrangement (7¼–8 per cent a year) became increasingly unrealistic, and the OECD members concerned sought new understandings that would effectively limit disruptive competition in the export credit field. Although the minimum interest rates of the Arrangement were raised slightly (to a range of 7¾–8¾ per cent) in May 1980, a number of important technical and policy issues were still unresolved. A major issue was how the new guidelines should take into account differences in domestic interest rates in the creditor coun-

tries, since any established minimum interest rate could imply different degrees of actual subsidization. At their meeting in June 1980, the OECD Ministers "welcomed the immediate measures recently taken in the field of interest rates" and pledged efforts to reach a mutually acceptable solution by December 1, 1980. However, competition for export orders both within the OECD area and in third markets remains intense, and the authorities of several countries appear to be under strong domestic pressure not to accede to more stringent limitations on export credit subsidization. Several major trading nations provide highly subsidized official export credits. As the terms of the Arrangement were not improved, the U.S. Export-Import Bank recently sought to restore its competitive position by granting some export credits with maturity periods in excess of the ten-year maximum specified in the Arrangement. Export credit practices of signatories to the OECD Arrangement that are in conformity with that Arrangement are not considered as export subsidies prohibited by the GATT Code on Subsidies and Countervailing Duties.

## Rules on Dumping

Another MTN result was the revision of the 1967 Antidumping Code to clarify and strengthen some provisions of the previous code. It was made necessary by the formulation of the new Code on Subsidies and Countervailing Duties, since the GATT has broadly parallel provisions for imposition of antidumping and countervailing duties. The amendments in the revised Antidumping Code include: (1) a more precise definition of the concept of "material injury" and a specific enumeration as to how national authorities are to determine material injury; (2) elaboration of the circumstances under which price undertakings by exporters could lead to suspension or termination of antidumping proceedings; and (3) revised provisions for the imposition and collection of antidumping duties. The code establishes a Committee on Antidumping Practices comprised of code signatories, who are to examine the consistency of national legislation with the Antidumping Code and discuss antidumping cases. In early 1981, the Committee examined two recent developments—the establishment of a revised trigger price mechanism for the steel sector in the United States and the bilateral undertakings by foreign suppliers of steel to the European Community, which cover both export prices and quantities. When the former Committee on Antidumping Practices, set up under the 1967 Antidumping Code, had examined the earlier version of the U.S. trigger price mechanism and the European Com-

<sup>6</sup> The term "contracting parties" refers to GATT members acting individually. "Contracting Parties" is used in this paper in place of "CONTRACTING PARTIES" as used in GATT official documents to refer to actions by signatory countries as a group.

munity's initial basic price system,<sup>7</sup> it was recognized that these mechanisms had been introduced specifically for the steel industry. Several participants had expressed the hope that such schemes would be temporary and would not be extended to other sectors.

### Increased GATT Surveillance

An important result of the MTN was the decision to strengthen the role of the GATT in exercising closer surveillance over trade policy actions of contracting parties. Although many GATT bodies are concerned with this surveillance, three new developments may be very important in the post-MTN period.

First, the MTN resulted in the establishment of the Consultative Group of Eighteen as a permanent GATT body,<sup>8</sup> charged with assisting the Contracting Parties in carrying out their responsibilities, particularly with respect to:

- (a) following international trade developments with a view to the pursuit and maintenance of trade policies consistent with the objectives and principles of the General Agreement;
- (b) the forestalling, whenever possible, of sudden disturbances that could represent a threat to the multilateral trading system and to international trade relations generally; and action to deal with such disturbances if they in fact occur;
- (c) the international adjustment process and the coordination, in this context, between the GATT and the IMF.

A second development concerns the new Understanding Regarding Notification, Consultation, Dispute Settlement, and Surveillance, which requires the Contracting Parties to conduct "a regular and systematic review of developments in the trading system." In March 1980, the GATT Council agreed to conduct such reviews for the purpose of surveillance at special sessions to be held twice a year.

Finally, the GATT Committee on Trade and Development, which is charged with reviewing the implementation of Part IV of the General Agreement (concerning the special interests of developing contracting parties), was strengthened. In March 1980 the Committee established a Subcommittee on Protective Measures to examine "any case of future protective action by developed countries against imports from developing countries in the light of relevant provisions of the GATT, particularly Part IV thereof."<sup>9</sup> In the

first ten months of its existence, the Subcommittee was notified of only two actions.<sup>10</sup>

### Dispute Settlement Procedures

A recent development is the increased use of GATT dispute settlement procedures by contracting parties. The understanding on dispute settlement procedures<sup>11</sup> contains an annex entitled, "Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement (Article XXIII:2)," which clarifies and codifies existing practices. A three-tier procedure is envisaged: first, an effort is to be made to resolve each trade dispute through consultations; second, if a dispute remains unsettled, "the contracting parties concerned may request an appropriate body or individual to use their good offices" to achieve a conciliation; and finally, a contracting party invoking Article XXIII:2 may request the establishment of a panel or a working party to assist the Contracting Parties to deal with the matter.<sup>12</sup> A principal function of the GATT panel itself is to try to develop a mutually acceptable solution to the dispute. If this fails, however, it may deliver its findings to the Contracting Parties for appropriate action. In recent months, the number of cases for which panels have been established (Table 1) has sharply increased, possibly because of the availability of a clearer procedure for dispute settlements or the increased frequency of disputes, or both. Most panels have been established in disputes between developed countries, and a large number of the complaints concern the agricultural sector.

### Trade Restrictions for Balance of Payments Purposes

A key concern of policymakers in recent years has been to ensure that countries did not resort to trade restrictions in order to avoid or postpone needed balance of payments adjustment. The 1974 Rome Communiqué of the Fund Board of Governors' Committee

<sup>7</sup> GATT, *Basic Instruments and Selected Documents: Twenty-Fifth Supplement*, pp. 18–21.

<sup>8</sup> GATT, *Basic Instruments and Selected Documents: Twenty-Sixth Supplement*, pp. 284–90.

<sup>9</sup> *Ibid.*, p. 219.

<sup>10</sup> Chile notified the Subcommittee of pending U.S. legislation under which imported copper would be subject to a charge equal to the cost advantage accruing to foreign producers not subject to rules of environmental contamination control, such as those in the United States; and Australia notified the Subcommittee of certain proposed changes in the preferential quotas for developing countries eligible under its scheme of preferences. Several trade actions not formally "notified" were also discussed by the Subcommittee.

<sup>11</sup> Formally, the Understanding Regarding Notification, Consultation, Dispute Settlement, and Surveillance.

<sup>12</sup> GATT, *Basic Instruments and Selected Documents: Twenty-Sixth Supplement*, pp. 211–12. GATT Article XXIII:2 stipulates the circumstances in which disputes between contracting parties may be referred to the Contracting Parties.



**Table 1. GATT Panels Established Since 1978**

| Requesting Country | Date Panel Established | Subject of Examination  |
|--------------------|------------------------|---|
| Australia          | November 1978          | European Community (EC) sugar export refunds  |
| Brazil             | November 1978          | EC sugar export refunds   |
| Chile              | July 1979              | EC restrictions on imports of apples from Chile   |
| Hong Kong          | July 1979              | Norway's Article XIX action on certain textile products   |
| Canada             | November 1979          | Japanese restrictions on imports of leather   |
| United States      | January 1980           | Spanish measures concerning domestic sale of soybean oil  |
| Canada             | March 1980             | U.S. prohibition of imports of tuna and tuna products from Canada   |
| United States      | March 1980             | Japanese measures affecting imports of manufactured tobacco   |
| Brazil             | June 1980              | Spain's tariff treatment of unroasted coffee  |
| Canada             | June 1980              | Access of Canadian beef under EC tariff quota established as part of MTN settlement                         |
| United States      | October 1980           | U.K. practices affecting imports of poultry from the United States  |
| India              | December 1980          | U.S. imposition of countervailing duty without injury criterion on industrial fasteners imported from India |

Source: GATT Document L/5072 (November 20, 1980).

on Reform of the International Monetary System and Related Issues (Committee of Twenty) and the OECD's Annual Trade Pledges of 1974–79 reflected this concern. In the context of the MTN, also, a number of decisions were made to reinforce the rules governing GATT consultations with contracting parties that resorted to trade restrictions for balance of payments purposes. The Contracting Parties' Declaration on Trade Measures Taken for Balance of Payments Purposes centralizes such consultations in the GATT Committee on Balance of Payments Restrictions and establishes certain criteria for the Committee to use in determining the procedures to be applied to consultations with developing contracting parties.<sup>13</sup>

Table 2 contains a list of the countries that have consulted with the Committee on Balance of Payments Restrictions since 1978. The focus of the Committee's examination has been on across-the-board restrictions for which the contracting party requests GATT

**Table 2. GATT Consultations on Balance of Payments Restrictions, 1978–80**

| Country     | Year of Consultation <sup>1</sup> |
|-------------|-----------------------------------|
| Argentina   | 1978                              |
| Bangladesh  | 1978, 1980                        |
| Brazil      | 1978, 1980                        |
| Chile       | 1978                              |
| Egypt       | 1979                              |
| Finland     | 1978                              |
| Ghana       | 1978, 1980                        |
| Greece      | 1978, 1980                        |
| India       | 1978, 1980                        |
| Indonesia   | 1979                              |
| Israel      | 1978, 1980                        |
| Korea       | 1978, 1979                        |
| Pakistan    | 1978, 1980                        |
| Peru        | 1979                              |
| Portugal    | 1978, 1979, 1980                  |
| Philippines | 1980                              |
| Sri Lanka   | 1979                              |
| Tunisia     | 1978, 1979                        |
| Turkey      | 1978, 1979                        |
| Yugoslavia  | 1978                              |

Source: GATT.

<sup>1</sup> Some countries consulted more than once in a calendar year.

approval on the basis of a balance of payments justification. Sectoral measures, or measures for which no explicit balance of payments justification is provided, largely escape such examination.

## Future Work on Trade Policies

### Safeguards

As the negotiations on safeguards were never concluded in the Tokyo Round of Multilateral Trade Negotiations, the GATT established a Committee on Safeguards to continue discussions. One of the main unresolved issues still is whether safeguards (under Article XIX of the General Agreement) should continue to be nondiscriminatory, and thereby difficult to invoke, or should be permitted on a selective basis, thus perhaps being used most often to restrain "successful" exporting countries. Another important issue is the extent to which actions of a safeguard nature outside the scope of Article XIX, such as orderly marketing agreements and voluntary restraint agreements, should be covered by the negotiations on safeguards. An early resolution of these and other issues appears unlikely at present.

Since the end of the Tokyo Round, Article XIX actions have been taken on fewer than a dozen occasions and by only six contracting parties (Table 3). A majority of the restrictions have been applied on a nondiscriminatory basis. Of the restrictions applied on a discriminatory basis, the most important was the

<sup>13</sup> *Ibid.*, pp. 205–209.

**Table 3. Invocation of GATT Article XIX, 1978–80**

| Country            | Product  | Measure                  | Year Introduced (Terminated) |
|--------------------|--|--------------------------|------------------------------|
| Australia          | Wool worsted yarns                                   | Tariff quota             | 1978                         |
|                    | Double-edged safety razor blades                     | Quantitative restriction | 1978                         |
|                    | Sheets and plates of iron and steel                  | Quantitative restriction | 1978 (1980)                  |
|                    | Certain trucks and stackers                          | Quantitative restriction | 1980                         |
| European Community | Preserved mushrooms                                  | Quantitative restriction | 1978                         |
|                    | Yarn of synthetic fibers <sup>1</sup>                | Quantitative restriction | 1980 (1980)                  |
| Iceland            | Furniture, cupboards and cabinets; windows and doors | Import deposit           | 1979 (1980)                  |
| Norway             | Various textile items                                | Quantitative restriction | 1979                         |
| Spain              | Cheeses  | Quantitative restriction | 1980                         |
| United States      | Citizens' band radio receivers                       | Tariff                   | 1978                         |
|                    | High-carbon ferrochromium                            | Tariff                   | 1978                         |
|                    | Lag screws or bolts                                  | Tariff                   | 1979                         |
|                    | Clothespins  | Quantitative restriction | 1979                         |
|                    | Porcelain-on-steel cooking ware                      | Tariff                   | 1980                         |
|                    | Preserved mushrooms                                  | Tariff                   | 1980                         |

Source: GATT.

<sup>1</sup> United Kingdom only.

imposition by the United Kingdom, under authority from the Commission of the European Communities, of import quotas on two types of synthetic fibers. The restriction, which applied to imports from countries other than members of the European Free Trade Association (EFTA), preferential countries, and countries with which the European Community maintained bilateral agreements under the Multifiber Arrangement (MFA), primarily affected U.S. exports and was lifted at the end of 1980. An earlier Article XIX action by Norway had concerned a global import quota on certain categories of textiles and clothing and had also excluded imports from member countries of the Community and EFTA, as well as imports from countries with which Norway had concluded bilateral agreements with the intention of acceding to the MFA; this measure affected primarily Hong Kong, which launched a complaint in the GATT that led to a panel finding.<sup>14</sup>

### Structural Adjustment and Protectionism

Although the link between an open trading system and the consequent shifts in the allocation of resources—as well as the desirability of cushioning the

impact of abrupt movements of factors of production away from sectors faced with competition from imports—has long been recognized at the national level, only recently has it begun to receive attention as a topic for international discussion and review.

In 1978, the OECD Ministers adopted extensive guidelines regarding structural adjustment entitled, "Policies for Adjustment: Some General Orientations."<sup>15</sup> Recognizing that positive adjustment policies must encompass not only industrial policies, but also employment, agricultural, regional, and regulatory policies, the OECD Communiqué stated that collective agreement on the need to shift from defensive to more positive adjustment policies would "make it easier for each Member country to follow appropriate domestic policies, and to honour its commitments under the OECD Trade Pledge." Ministers therefore agreed to review, analyze, and discuss developments in adjustment policies in the appropriate forums. Accordingly, in 1979, a Special Group on Positive Adjustment Policies was established in the OECD Economic Policy Committee. In recent months, the Group has conducted a country-by-country review of the adjustment policies of several OECD members.

<sup>14</sup> See also Section III.<sup>15</sup> OECD Communiqué, *Presse/A(78)23*, June 15, 1978.

More recently, GATT contracting parties have also begun to examine questions pertaining to structural adjustment, and a GATT Working Party on Structural Adjustment has held several meetings in 1981. In March 1981 it produced a report specifying the objectives and the nature of the work to be done in the GATT, as well as the procedures to be followed.

With international initiatives to promote structural adjustment becoming more widespread in recent years, difficult questions of policy are likely to arise in the future. Among these is the degree to which government involvement in the domestic economy can, or should, promote adjustment. Another issue concerns the increasing difficulty of distinguishing between internal and external measures to protect domestic industry from foreign competition. The 1980 OECD Trade Pledge includes an intention by governments:

to pursue policies in line with the general orientations agreed in 1978 which facilitate positive adjustment to structural changes in demand and production in the world economy and which therefore further the objective of securing an open trading system, and to avoid internal measures which have protectionist effect.

In practice, the extent to which international surveillance can control or eliminate domestic measures that impede adjustment is, however, open to question, and any specific policies may be difficult to devise at the international level. At the same time, as actions to restrict imports directly are more apt to come under international scrutiny, countries may have the incentive to resort to internal measures. In this context, the acceptance of domestic subsidies as a legitimate tool of domestic policy in the recently concluded Code on Subsidies and Countervailing Duties is an illustration of the difficulties involved.

## Agricultural Trade

In recent months increased interest among GATT and OECD members in restrictive policies in the agricultural sector has been evident. Some observers have suggested that the results of the Tokyo Round regarding agriculture fell short of expectations and that

renewed efforts should therefore be made to achieve greater efficiency in this sector. At the same time, given the nature of protective policies applied to agriculture, the long period during which protection of farm incomes has been accepted as a legitimate domestic policy objective, and the broader implications of any increased interdependence between nations resulting from a lowering of agricultural protection, the recent interest may be only the beginning of a movement for policy reforms. According to a decision of the Contracting Parties taken in November 1980, future meetings of the GATT Consultative Group of Eighteen would review matters affecting agricultural trade and would receive information on activities in the agricultural sector. At their meeting in June 1980, OECD Ministers had agreed to:

intensify efforts in the agricultural sector towards the achievement of the objectives agreed at the meeting of the Committee for Agriculture at Ministerial level in March 1980, inter alia to facilitate a more efficient use of agricultural resources on a world-wide scale and an orderly expansion of world trade and to improve both access to markets and security of supply and to avoid trade practices that lead to market distortions.<sup>16</sup>

## Other Aspects of Trade Policy

In accordance with its mandate to review and analyze trade developments and policies, the GATT Consultative Group of Eighteen has included in its future work program a number of subjects of new or renewed international interest. Upon agreement in the Tokyo Round that GATT provisions relating to export restrictions should be reassessed, the Consultative Group of Eighteen has recently decided to undertake such a reassessment. Also included for future review are: (1) international trade in services, which is being increasingly recognized as subject to myriad restrictions (Sapir and Lutz, August 1980), and (2) restrictive business practices, which have not been considered in the GATT since the late 1950s (Jackson, 1969, and Tumlin, 1980).

<sup>16</sup> OECD Communiqué, *Presse/A(80)37*, June 4, 1980, p. 6.