

Fifty Years: Looking Back, Looking Forward

by

Jagdish Bhagwati

This paper is written for the Symposium on the World Trading System, organised by the WTO and the Graduate Institute of International Studies in Geneva, on Thursday, 30th April 1998.

The 50 years of the multilateral trading system, as spanned by the birth of GATT at the beginning and the blossoming of the WTO at the end, merit unrestrained applause. Dividing the normal Centennial celebratory period by half is truly appropriate: while there has much been accomplished in the past 50 years, much remains to be done in the next 50 as well. There is little that I can add to the experience and insights that my many friends at this Symposium will say on this occasion.

But perhaps I can provide a unique perspective since I happen to combine contrasting personas. I was born in a developing country (India) but now am a citizen of a developed one (the United States). I am a scholar of trade theory but I also write on trade policy (unlike many who are not handicapped by scientific pursuits and knowhow). I am an academic (and the epithet “professor” is occasionally thrown at me in debate as if it was an affliction) but have also been “on the inside” (since Arthur Dunkel made me Economic Policy Adviser to the Director General, GATT, during 1991-1993). [I should not overdo this as I have limitations as well, which I was made aware of during the ill-fated negotiations for fast-track authority for President Clinton recently. I am informed that, on being faced by the US Ways and Means Committee with my Wall Street Journal (September 10, 1997) op.ed. article arguing against linking fast-track to environmental and labour requirements, Ambassador Charlene Barshefsky is alleged to have remarked: Bhagwati (garbled: I admit it is a difficult name for lawyers, not for economists who have been exposed to it excessively) does not understand trade; he has never been in a trade negotiation. Since a good lawyer friend of mine teaches mock trade negotiations at my university, I hope to sit in on one of them in the near future and rid myself of this crippling limitation.]

Looking Back

The achievements of GATT in liberalizing trade through reduced border trade barriers are too well known to need recounting. Successive Rounds of multilateral trade negotiations (MTNs), culminating in the successful Uruguay Round, have brought down trade tariffs to dramatically low levels around the world. True, there are still developing countries such as India whose tariffs call for significant reductions. But it is a mistake to believe, as Mr. Bergsten has argued recently in Foreign Affairs, that the future task for the WTO will be to exchange “fair trade” disciplines offered by the developed countries for lower trade tariffs and restrictions by the developing countries. In agriculture alone, the tariffication brought about by the Uruguay Round has now led to sufficiently high tariffs in the developed countries that cry out to be reduced in future MTN Rounds.

In the same vein, a steadily wider range of sectors with trade barriers has been brought under the GATT’s axe. Take just two major examples. Agriculture, having escaped GATT owing to the 1955 waiver, is now back in the picture, with definite steps taken towards freeing of trade therein with the Uruguay Round. And we now also have progress made on financial and other services in the GATT under the GATS umbrella.

Equally, the list of GATT’s achievements must include the establishment of some, though woefully inadequate, discipline on “fair trade” rules. Economists understand only too well the misuse that has occurred of rules such as on anti-dumping (AD) measures, with continued capture of these ironically for “unfair” trade protectionism. It is an open secret that AD actions have in reality nothing to do with predation, and that the GATT has been unable to impose the necessary

discipline in this area. On the other hand, it is not hard to imagine what chaos could have reigned in the absence of the GATT.

The Uruguay Round also must be credited with having brought about a Single Undertaking, with common rules and obligations for all members, with exceptions largely reduced to transitional periods for developing countries. We thus finally have a WTO which aims to have a single set of rules to govern world trade. This is a considerable achievement as few of us believe now, as many of us did in the 1950s through 1970s, that there should be Special & Differential (S&D) treatment for the developing countries. The earlier view was based on the belief that there was a different economics governing developing countries, requiring a different policy framework and special exemptions permitting readier resort to trade barriers for balance of payments reasons and on infant industry protection grounds, thus effectively exempting them also from the expected reciprocity in reductions of trade barriers in MTNs. Now, we believe that letting developing countries hold on to their trade restrictions is to let them shoot themselves in the foot, that the same economics applies to them as to others. Their growing importance in world trade also makes it politically impossible to maintain huge asymmetries of market access. The imposition of the same rules on both sets of nations has therefore become the norm, implying a Single Undertaking. [In this context, the notion that the “least developed countries” should still be accorded S&D status is to ignore these fundamental lessons.]

Next, the WTO now has an effective Dispute Settlement Mechanism. We have moved away from an ineffective system where a defendant could veto the adoption by the GATT Council of an adverse finding. This has removed the incentive to exercise “aggressive unilateralism” of the Section 301 variety in cases where the defendant did act this way, as in the soyabean case where the EU had blocked two successive adverse findings at the GATT and then the US had resorted

unilaterally to retaliatory tariffs.¹ The strengthened Dispute Settlement Mechanism has also led to increased resort to its impartial procedures to cool bilateral disputes which, as in the US-Japan automobile case, were marked by acrimonious friction inherent to bilateral confrontations. The WTO resolution of the Eastman-Kodak-Fuji dispute has also served to underline the fact that unilateral determination of “unfair trade” by national bodies such as the USTR, on the basis of complaints by interested national parties, and threats based thereon are simply an unacceptable way of proceeding in such disputes: the total defeat of Eastman Kodak shows how baseless the US complaints against Japan are likely to have been, exactly as argued by some of us over the years in the teeth of assertions backed by few or no arguments. All this is to the good.

Environmental Problems

The environmental interface with WTO rules is also a matter of considerable controversy and I believe that the time has come to take a concerted look at the problems that have emerged.

First, the basic idea that purely-domestic, as against global, environmental pollution should be dealt with by harmonization or upward movement of lower tax burdens abroad, has an intuitive appeal. But, as I and Professor Srinivasan have argued (in Bhagwati-Hudec, *op.cit.*, Chapter 4), there is a perfectly legitimate case for diversity in pollution tax rates for identical pollution across countries in the same industries (what we call CCII tax burden differences).

Besides, the fears of a race to the bottom, which is theoretically possible, are unjustified by the empirical findings that corporations seem to use the more environmentally friendly technologies

¹ Section 301 actions where the US is seeking to impose new obligations on others, not covered by earlier treaty commitments, are still a problem, however, for the US administration if it wishes to abide by the spirit of multilateralism in the teeth of repeated attempts by US lobbying groups, and Congress, to impose their demands on foreign nations. The distinction between these two types of 301 actions was noted and explored in contributions

even where the requirements are more lax. So, the argument that free trade requires fair trade in the sense of harmonization or upgrading of foreign tax burdens with one's own is ill-taken. Thus, most of the arguments advanced against free trade on this account, and the demands that the WTO should have "social dumping" clauses to permit countervailing duties when the foreign pollution tax burden is lower, are simply mistaken.

Next, this still leaves open questions of the type raised by the Shrimp-Turtle and the Dolphin-Tuna decisions. In all these cases, the GATT and WTO judgments are quite sound, in my view. Speaking very broadly, it makes little sense to legitimate unilateral assertion of environmental and social preferences and thereby suspend other WTO members' access to one's markets. It is surely more desirable to reach agreement on these matters through negotiations and, failing that, to suspend such trade while paying, if challenged at the WTO, suitable compensation for such unilateral suspension. If we do not do that, the road will open for everyone making such unilateral assertions and disrupting trade in consequence. The issue requires accommodation of the kind embodied in the entire set of WTO procedures and ideas on how to handle such conflicts. The more militant environmentalists and NGOs such as The Public Citizen portray the WTO in demonized and distorted form on this question when, in fact, their own views are unbending, unaccommodating and destructive.

Finally, I believe that, on the global environmental issues, we badly need to grandfather in the trade sanctions against defectors and free riders in the existing Multilateral Environmental Treaties, taking them (quickly) one by one to ensure that these potentially targeted nations have no justifiable case against such a procedure. [For instance, a pacifist in a war is a "conscientious

objector”, not a “free rider”.] My own impression is that the MEAs have taken good care to carry most nations on board through suitable accommodations of the countries that may object.]

MAI

It is probably a heresy to say that the MAI, as presently drafted, and at the present time, is not a good idea and that it should be shelved temporarily. But the adverse reception accorded to the unveiling of the OCED-produced draft and the temporary withdrawal of it from any agenda indicate that there are basic problems with MAI. True, with trade and investment closely tied together today, an agreement on investment at the WTO seems a good idea.

But such an agreement must be balanced in at least two ways: first, it should not be just about removing obstacles to investment but also subventions and subsidies to it; and second, it must be formulated with the active participation of both developing and developed countries. Neither has been done.

Besides, tricky questions such as the use of state power against specific foreign firms with a view to extracting concessions from their governments have not been addressed. Thus, during the US-Japan auto dispute, it was remarkable that the US was threatening to zero in on Japanese auto firms' luxury model exports to the US with punitive tariffs of 100% simply to impose import targets, component-purchase targets et.al.. All this, while asserting in other contexts the need to leave multinationals free from political interference in matters of production and trade! Again, the US was jawboning Japanese transplants into buying more US components, virtually intimidating these firms into a “local purchase” policy, while pushing for the adoption of TRIMs outlawing the use of “local content” clauses by host countries for multinationals! MAI does not adequately

come to grips with such transgressions by the powerful countries, while seeking to impose constraints on the weaker countries. But it should if it is to be credible.

In addition, I feel that the timing of the MAI is precipitous and bad. Developing countries are pushing their DFI (direct foreign investment) doors open quite dramatically on their own. If obstacles are created for DFI, you lose out in the race for more DFI that almost every country is engaged in. Why then get into devising MAI and selling it at the WTO when the market forces are already leading countries to several pro-DFI practices? By formalizing all this into an explicit MAI, we make this into a political issue, and invite the anti-DFI lobbies, the anti-WTO lobbies and all the wackos in every country on to center stage. The WTO is in enough trouble from such lobbies, which played some role in President Clinton's defeat on fast-track renewal ; it seems a foolish idea to add to them gratuitously. In fact, every informed scholar of the politics of international economic policy knows, the level of political difficulty escalates as you go from free trade in goods to free trade in services, to freedom of DFI, to freedom of all capital flows, to freedom of labour flows. We seem to have forgotten all this in the flush of the victory (still incomplete) of free trade forces at Geneva; but we do so at our peril.

Competition Policy

Finally, I believe that we have to get what Sylvia Ostry has called "system friction" under some form of managed control at the WTO. This involves getting into what is best called "competition policy". Two sets of problems in particular are important to distinguish. First, problems of market access in our exports, and predation by exporters in our imports, have come to the forefront and we need to come to agreed parameters on what is acceptable practice and what is not.

Second, while we trade economists correctly view trade as the best antidote to domestic monopoly, it is also true that international cartelisation can kill that therapeutic effect. Clearly, some form of agreed anti-trust policy, which is not just “anti-big” on a kneejerk basis, has to be evolved . That is an important, unfinished task.