THE ARCHITECTURE OF THE WTO

by

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During preparations for the next round of multilateral trade negotiations, divergent views emerged among governments as to the scope of the round. In addition to the items mandated by the Built-in Agenda from the Uruguay Round, there were various proposals to extend the Round to other issues. For example, the EU and the US were in favour of adding labour and environment issues as well as some trade areas. Developing Countries stated that they are dissatisfied with the implementation of many Uruguay Round commitments such as the Agreement on Textiles and Clothing, the excessive use of anti-dumping actions, and the failure to respect the principle of special and differential treatment. Equally many of the proposed items were strongly opposed by other nations; for example, the Developing Countries generally were determined to keep labour and investment issues out of the negotiations. Moreover, there are now 135 members of the WTO compared with 103 at the start of the Uruguay Round which may make “consensus” more difficult to achieve.

In addition, there have been substantial changes in the world economy in the 1990s. Capital is much more mobile internationally and exchange rates are more flexible. Many of the transition economies of East Europe and Central Asia have suffered declining incomes and their economies are not integrated with the rest of the world. Electronic commerce has boomed. Regional trading arrangements have proliferated.

In these circumstances, there is a need for a clear view as to the direction in which the WTO should move. It is vital that global institutions change to accommodate structural changes in the world economy. This Round will be the First WTO Round. For the first time in the post-Second World War era, the world has an organisation that is capable of playing the role of the third institution envisaged by the 1944 Bretton Woods Convention. The GATT was not a multilateral organisation and operated for almost 50 years under the Protocol of Provisional Application. It had what the eminent US international lawyer John Jackson has called a “flawed constitution” (Jackson, 1997, p. 35). By contrast with the GATT, however, the WTO is an international organisation with provision for an institution, a secretariat and a more complex set of rules regarding decision-making.

This paper takes a long term view of the future of the WTO. It is concerned with examining how the organisation should change to provide a set of rules that lead to the efficient organisation of world production and consumption in a world economy with much higher levels of cross-border flows of trade in goods, services, assets and intellectual property. These issues are within the scope of “institutional” issues being canvassed in the process of the WTO preparing for the third Ministerial Conference. They are relevant to the new round and to subsequent rounds beyond that. The paper considers only individual issues which have architectural implications and it does not consider modalities of reducing barriers to trade.

Section 1 discusses the present objectives of the WTO. It proposes an objective of full non-discrimination against foreigners for the WTO. This comprises global free trade and national treatment without exception or favour and implies the derivative principles of equality of treatment and universality of coverage. These principles should guide the development of the rules of the international trading system. Section 2 looks at the

architecture of the WTO that stems from the evolution of the GATT and the agreements of the Uruguay Round. The inconsistencies in these agreements may be called incoherence in the internal architecture of the WTO. It discusses the implications of achieving full non-discrimination of the world economy for the scope of the negotiations in the next round. Section 3 looks at the external architecture of the WTO in relation to the new issues which might be included in the WTO negotiations in the next round and beyond, and the relationships between the WTO and other multilateral organisations. Some general observations are made in Section 4.

1

The Objectives of the WTO

The objectives of an organisation are fundamental to the design of its rules. The second paragraph of the Preamble to the GATT sets out what might be called ultimate objectives in terms of full employment, rising standards of living and developing full use of the resources of the world. The next paragraph states that, in pursuit of these "objectives", the GATT shall seek "the substantial reduction of tariffs and other barriers to trade and … the elimination of discriminatory treatment in international commerce" (that is, geographic discrimination). The Preamble to the Marrakesh Agreement repeats the language of the GATT with the significant substitution of the objective of "sustainable development" for the GATT objective of "developing full use of the resources of the world". In effect, these paragraphs mean that the proximate and effective objective of the GATT and the WTO has been trade liberalisation and the elimination of geographic discrimination.

There are clauses of the GATT and of the Agreements made in the Uruguay Round which, implicitly or explicitly, pursue other objectives. The most notable and troublesome of these is Article VI. Although the Article and the 1979 Anti-Dumping Code do not mention the word, this clause was added in pursuit of "fair trading" (Jackson, 1997, chapter 10), not free or freer trading. Unlike the treatment of other forms of tariffs and non-tariff barriers, the provisions of Article VI and later amendments do not prohibit dumping action or subsidies[1] or provide for the negotiations of them downwards. Instead they permit the country in which the goods are landed to take counter-action at its discretion and subject to the rules laid down. This provision has created endless conflict among members and is now one of the major concerns. The problems with anti-dumping and anti-subsidisation actions stem from the objective of "fair trade" which is ill-defined and conflicts with trade liberalisation.

There are other Articles of the GATT 1994 and Uruguay Round Agreements concerned with competition problems. From the point of view of objectives, a difficulty with these provisions is that they are interpreted by the WTO and WTO members as a means of pursuing market access and promoting international trade. Competition specialists believe that the appropriate objective of laws relating to competitive behaviour is the promotion of competition. Laws which are based on the promotion of trade can distort the application of competition measures and reduce welfare (see OECD, 1999; Hoekman, 1999 and Lloyd and Vautier, 1999).

A related problem arises with trade involving goods protected by intellectual property rights. The Preamble of TRIPS states explicitly "the need to promote effective and adequate protection of intellectual property rights". As with the enforcement of other WTO competition-related issues, this objective can conflict with trade liberalisation and have negative effects on the welfare of some countries.

An illustrative example that has been the subject of incipient disputes between several WTO members is the problem of parallel imports. Parallel imports are imports of branded goods by importers other than the holders of intellectual property rights. Article 6 of TRIPS states that "nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights'. This leaves countries free to determine the extent of parallel imports and this extent varies among countries. The US applies a policy of "national exhaustion" which prohibits parallel imports and the EU applies a policy of "regional" exhaustion which permits them for intra-EU trade but bans them for imports from outside the EU (Maskus, 1998). Japan and more recently Australia and New Zealand have adopted a policy of "international exhaustion" which permits parallel imports for some intellectual property-protected goods. A ban on parallel imports is a restriction on international trade and these countries oppose efforts by the US and the EU to restrict this trade.

Extending the Objectives of the WTO

The most obvious extension of the present objective is the objective of free trade by all members of the WTO. Overlooking the trade involving non-members, this would give global free trade. Bergsten (1996) advocated this objective. He suggested a target date of 2010 with an extension to 2015 or 2020 for the poorest countries. In the context of the WTO, the achievement of this objective would mean the removal of all government-induced border (tariff and non-tariff) barriers to the movement across national borders of all goods and services. It is more accurate to speak of zero distortions to international trade than zero barriers as some government measures such as export subsidies and FDI incentives encourage trade. Free trade would, therefore, require the elimination of all export or import subsidies or other devices which increase trade beyond the zero distortion level. It would also be desirable ultimately to bind all tariff and subsidy rates at zero. Commitment to this objective would eliminate all differential treatment and inconsistencies among commodity and geographic groups.

But removing all border measures which reduce or distort trade is not enough to establish equality of market access for foreign producers. Lawrence (1996) put forward the concept of "deep integration". "Deep integration" refers to policies which are "beyond the border" in contrast to "shallow integration" which refers to the elimination of the traditional border protection measures, tariffs and non-tariff measures. Examples of deep integration are the development of standards relating to industrial products or safety or health or the environment, policies relating to particular sectors such as industry or transport, and business laws which are amended to remove differentiation between foreign and domestic supplies.

This notion of deep integration is extremely suggestive but it is not clear which domestic laws and regulations should be covered. Probably all domestic laws and regulations affect some international transactions. We require a more precise basis for determining which domestic laws and regulations are the appropriate concern of a multilateral organisation such as the WTO.

Here the concept of ”economic integration” is invaluable. This term is used frequently by analysts of both regional and multilateral organisations but it is generally used loosely. Economic theory provides a precise definition of a single integrated market which is based on the notion of complete equality of access. It is therefore an appropriate extension of the concepts of free trade and market access. Dixit and Norman (1980, p. 109) developed a definitive statement of the concept. They defined a “fully integrated world economy” as one in which the Law of One Price holds in all goods and factor markets. (There are no services as distinct from goods in their model but these are easily accommodated in the definition.) There is perfect arbitrage among national markets, differences in market prices among nations reflecting only differences in transport costs and other real costs which differentiate commodities in different locations.

Full integration is relevant to a multilateral trade organisation because it is based on the notion of maximising global economic welfare. Standard general equilibrium theory for a competitive world economy shows that integration in this sense, with the attendant removal of all border and non-border distortions, is a necessary and sufficient condition for Pareto-efficiency in the world economy, that is, for Pareto-efficient production and distribution allocations. As Ohyama (1999, p. 6) has expressed it

“If the price of good i relative to good j is higher in the home country than in the foreign country, one may infer that the buyers' evaluation of good i relative to good j is higher in the home country than in the foreign country, or conversely, the buyers' evaluation of good j relative to good i is higher in the foreign country than in the home country. It would then be possible to increase the welfare of both countries by decreasing the usage of good j and increasing the usage of good i slightly in the home country and increasing the usage of good j and increasing that of good i by the same amount in the foreign country .... This conclusion is applicable to any pair of goods irrespective of whether they are consumption goods or intermediate goods.”

The argument extends to international trade in fixed capital goods. If the rate of return (marginal productivity of capital) is higher in one country than another aggregate world production is increased by moving capital to the country with the higher rate of return (marginal productivity of capital).

Full or complete integration of markets across national borders, however, implies much more than free trade or free market access. In goods markets, this equality implies the removal of all border and non-border restrictions /incentives on commodity trade, full national treatment, and the harmonisation of commodity taxes/subsidies and other measures which affect access to markets. In factor markets, it implies the removal of all border restrictions of movement of capital, full national treatment of foreign-owned factors and again the harmonisation of factor taxes/subsidies and other measures that affect market access.

This definition of integration or, if one wishes, of a Single Market, can be applied to a region of several countries or to the whole world economy. At the regional level, one can say that recent or second generation RTAs such as the EU, CER and NAFTA are progressing towards full regional integration, though only the EU has adopted regional integration as a goal in the original form of the Common Market and more recently as the Single Market of the Maastricht Treaty. Similarly, some elements of progression towards the integration of all global markets crept in to the Uruguay Round but neither the GATT nor the WTO have contemplated this goal.

However, full integration is not a feasible objective. Governments must raise revenue to fund various expenditures and they regulate many industries or activities. Virtually all revenue taxes are distorting and country-specific and regulations are also country-specific. Consequently they violate the requirements of full integration of national economies.

There is a less ambitious goal which is feasible. This is the objective of non-discrimination in all transactions. The OECD has expressed this objective in the following terms:

> "The ultimate objective is that residents of different Member countries should be as free to transact business with each other as are residents of the same country." (OECD, 1990, p. 13).

It combines non-discrimination in the sense of the global free trade applied at the border with National Treatment without exception. The OECD applied the term to cross-border investments but it applies to all cross-border transactions, that is, goods and services and capital and labour transactions. In the terminology of tax theory, it is the principle of neutrality between foreign and domestic transactors.

Full non-discrimination (global free trade and national treatment without exception) with respect to trade in goods and services could be adopted by the WTO as the objective to govern the rules of the multilateral trading system. Full non-discrimination with respect to capital movements could also be adopted by the WTO but this involves the choice of the WTO as the appropriate body to manage a rules-based system for international capital movements. This issue is a part of issues relating to external architecture, which are considered in Section 3. Full non-discrimination is less comprehensive than the objective of full integration as it does not require the harmonisation of taxes and other laws and regulations which do not discriminate between foreign and domestic residents within an economy. Members would therefore retain national sovereignty over taxes and regulations as long as they do not discriminate against foreigners.

Full non-discrimination with respect to international transactions in goods and services is not achievable in the first WTO round as it is too big a step for the members collectively at this time. However, the substitution of an objective of (completely) free trade and national treatment without exception for the present objective of freer trade is quite achievable. It requires only a declaration that this is the long-term objective of the organisation.

The history of the GATT has been progress in the direction of free trade despite periodic reversals. In some geographic or commodity sub-areas free trade in goods and services has already been achieved. Some RTAs, most notably the EU and the Closer Economic Relationship (CER) Agreement between Australia and New Zealand, have achieved

complete free trade in goods and services and NAFTA has progressed far in this direction. Many Developed Countries have granted free market access to goods imported from Developing Countries, at least for some commodity groups, under GSP and other preferential schemes. The Director-General of the WTO has been urging WTO members to give bound duty-free access for the export products of least-developed countries since the Lyon Summit of 1996 and recently suggested this should be a key objective of the next round of multilateral negotiations (Ruggiero, 1999). The Information Technology Agreement of 1997 has achieved virtual free trade for this group of products; the members who have signed the agreement account for 95 per cent of the roughly US$450 billion world trade in the products and in most cases tariffs will be eliminated by 2000.

Similarly, GATT has progressed towards the elimination of discrimination through non-border measures. Article III of GATT 1947 provided national treatment with respect to internal taxes and regulations. The Tokyo Round developed the Agreement on Technical Barriers to Trade. The Uruguay Round included the revised Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures. In these cases the WTO did not develop uniform or minimum standards. The GATT wished only to minimise the trade-restricting effects of such standards. The GATS definition of market access actually goes beyond the principle of full non-discrimination as it extends to measures which restrict access but do not discriminate against foreigners as such (Snape, 1998). These measures include regulatory regimes and monopolies and other restrictions on competition.

Irrespective of whether the objectives of the WTO are amended, full non-discrimination provides a standard against which the present multilateral rules may be compared. For this purpose, the following concepts are valuable.

Equality of Treatment and Universality

Full non-discrimination applies to all imports and exports of all traded commodities. It, therefore, implies the principles of equality of treatment between any pair of product or country groups covered by the rules and universality of coverage of groups. There are two dimensions of equality and universality; one in relation to commodity groups and the second in relation to member countries.

In relation to goods and services, equality and universality means one set of rules for all goods and services, though this also permits additional sector-specific rules consistent with the general rules. The argument is sometimes made that some sector is “special”. This breaches equality. Every sector has its peculiarities but none should be treated differentially under the rules of the WTO. This was the intention of the architects of the GATT. GATT 1947 generally treated all goods equally.

This argument of specialness has been made in the past in relation to the agriculture sector in particular.[2] There were exceptions in GATT 1947 in relation to agriculture under Article XI (General Elimination of Quantitative Restrictions) allowing export prohibitions or restrictions but on a temporary basis only and allowing restrictions on imports of agricultural or fisheries products as a part of the enforcement of government regulatory measures. There was also an exception under Article XVI (Subsidies) allowing export subsidies but such subsidies were not to give more than an equitable share of world trade

and contracting parties were enjoined to seek to avoid the use of them. These exceptions were intended to be minor but they were breached seriously during the lifetime of the GATT. A new multilateral organisation provides an opportunity to enforce the intentions of the architects of GATT and the WTO.

In relation to members, equality of treatment means uniform treatment among members. One implication of adopting the objective of full non-discrimination is that regional preferences are not a long-term option. Such preferences would then be a transition to full MFN and National Treatment.

Equality of treatment is controversial in relation to Developing Countries. The original articles of the GATT did not distinguish between group of countries. All of the Contracting Parties were bound in the same way by the rules. The one exception was Article XVIII which allowed additional freedom for the "economies which can only support low standards of living and are in the early stages of development" to be able to grant tariff protection for the establishment of particular industries, and to apply quantitative restrictions in times of balance of payments difficulties. From early in its history, however, the GATT displayed concern over the particular trading problems of low income countries. In 1966 Part IV was added and in the Tokyo Round an Enabling Clause was adopted giving the Developing Countries "special and differential" treatment in the GATT.

The Uruguay Round changed the situation of the Developing Countries (as they are officially called in the WTO) rather substantially. While several Uruguay Round Agreements affirm the special and differential status of Developing Countries (see Hoekman and Kostecki, 1995, Annex 6 and Finger and Winters, 1998), they also repeatedly make a distinction between the "Least Developed" member Countries and other Developing member Countries. In the Subsidies Agreement, the distinction between these two groups is set at a GDP per capita of US $1,000.

Equality of treatment in relation to members is a long-term goal. There is no question that the WTO must consider the special problems and needs of the Developing Countries in the next round. Universality would commit the Developing Countries to the achievement of full non-discrimination in the long term. Many Developing Countries have substantially reduced border barriers to trade in goods (see Drabek and Laird, 1998). However, universality would permit a lower level of obligations at present, more flexible implementation timetables, particular measures to improve their market access and technical assistance and training.

Universality might also be taken to mean the desirability of all countries becoming members of the organisation. It is not desirable that countries which trade, and especially large trading nations such as China and Saudi Arabia, be outside the organisation which fixes the rules. Of course they have to agree to the rules of the club they seek to join but the current pace of additions of new members is very slow, only approximately 3 new members per year. Current members of the WTO are insisting upon demands on applicant members which exceed the commitments of present members at a similar level of economic development (Langhammer and Lücke, 1999).

Incoherence in the WTO Rules

There is incoherence in relation to the rules of the WTO, that is, its internal architecture. Incoherence is taken to be a violation of non-discrimination, that is, of the principles of equality of treatment or universality of coverage.

The rules of the multilateral trading system have been extended during the life of the GATT by adding new agreements dealing with specific groups of commodities or instruments of government policy at the multilateral rounds and occasionally at Ministerial Conferences. The textile and clothing industry has been covered by a long succession of short-term and long-term agreements, beginning with the 1961 Short-Term Arrangement and ending with the 1995 Uruguay Round Agreement on Textiles and Clothing. The Kennedy Round produced the Anti-dumping Code. In the Tokyo Round, there were a number of sectoral agreements (International Dairy Agreement, the Agreement Regarding Bovine Meat and the Agreement on Trade in Civil Aircraft) and a number of codes.[3] The Uruguay Round added more than a dozen Agreements, including two new areas of trade in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These commodity or instrument-specific agreements have greatly extended the rules of the multilateral trading system. By adding trade in services and intellectual property rights, the rules now encompass all produced goods and services. Primary factors, capital and labour, are excluded with the minor exception of Trade-Related Investment Measures (TRIMS) and some elements of GATS.[4]

These agreements were added because of a perceived need for further rules in particular areas. Because of their piecemeal nature, however, they created differences in the treatment of trade among buyers of goods and services. There are several dimensions to these differences. First, there are differences between commodity groups. Secondly, under separate provisions from the inception of the GATT, purchases by governments and government agencies have been treated differently and generally less strictly than trade between private agents. Thirdly, there are geographic differences.

Differences between commodity groups refer to differences in rules between commodity groups, not to the distribution of tariff rates or of tariff equivalent rates in member countries. The most obvious effect of different agreements is that some commodity groups have been excluded completely or largely from the multilateral trade liberalisation carried out under the GATT. The two exclusions are maritime transport services (shipping) and air transport services. The negotiations for maritime transport services were suspended in 1996. For air transport services, market access and other measures affecting trade are excluded from the Marrakesh Agreement itself by an Annex to the GATS. Hence, these two transport services industries are not covered by GATS except insofar as a minority of individual members have voluntarily made commitments on their GATS schedules. Two other sectors have been largely exempt from the liberalisation of trade measures for long periods of GATT negotiations, namely, textiles and clothing, and agriculture. The Uruguay Round attempted to reduce barriers in both sectors but with limited success.[5] Rules for export subsidies under the Agreement on Agriculture remain separate from those for other goods which come under the Agreement on Subsidies and Countervailing measures.

A second major example is the differences in the rules applying to goods trade under GATT 1994 and the supplementary agreements applying to goods trade on the one hand and the rules applying to services trade under the GATS on the other. There are several differences between them. Most fundamentally, the GATS covers all modes of service delivery from one country to another, not just cross-border trade as with the rules relating to goods trade. As Market Access under Article XVI of the GATS applies to all of the designated modes of supply, it applies to measures that restrict access but do not discriminate against foreign providers, unlike GATT 1994 for goods trade. It brings in elements of FDI regulation and competition law in the case of trade requiring a "commercial presence". It brings in elements of labour market regulation in the case of trade requiring the "movement of natural persons". There are no such rules in the WTO relating to FDI, competition law and the international movements of natural persons who work in non-service industries in the host countries. In GATS, market access commitments are made only for those sectors listed in the Member's schedules. As with GATT 1994, GATS declares the general principles of MFN Treatment and National Treatment but, unlike GATT 1994, the Agreement allows temporary exceptions to MFN if they are listed and National Treatment applies only to those sectors inscribed in the Member's Schedule and to the extent that limitations are not inscribed. And the GATS definition of National Treatment, unlike Article III of GATT, is not based on a distinction between border and internal measures. Other differences in particular rules include the existence of private business disciplines for trade in services under GATS Articles VIII and IX but not for trade in goods. Conversely, there are rules providing for anti-dumping action and safeguard measures, and rules restricting subsidies and providing for countervailing subsidies and restricting TRIMS for goods trade but none of these exist for services trade.[6]

These differences between the rules of GATT 1994 and GATS arose because of the decision in the Uruguay Round to negotiate a separate agreement on services trade. Overall, GATS is a mixture of rules relating to cross-border supply and some elements of regulation of foreign direct investment, competition law and labour markets. (For proposals concerning reform of GATS, see Snape, 1998; Feketekuty, 1998 and Low and Mattoo, 1999).

There are similar differences between the rules applying to intellectual property rights under TRIPS on the one hand and, on the other, the rules applying to goods and services trade under GATT 1994 and the agreements in the Uruguay Round. In particular, TRIPS establishes minimum standards for property rights protection whereas there are no WTO minimum standards in other areas of standards affecting trade in goods and services.

The distinction between private and public sector purchases is generally straightforward but the Agreement on Public Procurement exemplifies another peculiarity. This agreement is a plurilateral agreement, that is, it is binding only on the members who sign it. It is not a part of the Single Undertaking.[7]

The geographic dimension of differences of treatment does not refer to the existence of regional trading arrangements (RTAs) themselves as geographic discrimination is permitted under the rules and is the geographic counterpart of differences in MFN tariff rates among commodity groups. However, there are further differences in the rules between country groups which apply to members of an RTA formed under GATT Article

XXIV compared to those which apply to members of a regional trading arrangement formed under the Enabling Clause adopted by the Tokyo Round in 1979. These differences have given rise to problems of interpreting these rules within the GATT. There is a variant of the second dimension which applies within RTAs. The rules which apply to services trade among members of regional trading arrangements are contained in the GATS because the provisions of Article XXIV and the Enabling Clause do not extend to services. In this case, one product group within RTAs, namely services, is treated differently than other product groups within RTAs. (WTO, 1995, chapter 1 discusses geographically-based differences.)

These differences of treatment are artefacts of the order in which these problems were addressed in the history of the GATT and WTO. This lead Sauvé and Zampetti (1998) to observe that "Both as an institution and a negotiating forum, the WTO is indeed too segmented (i.e. 'vertical') in design and operation. Its architecture can be viewed as a succession of vertical 'chapels', its whole representing in many instances little more than the incoherent sum of a number of "partial equilibrium" responses to the 'general equilibrium' challenge of rule-making in a globalising environment." Some of the peculiarities of the sector-specific agreements resulted from the necessity to reach an agreement among the negotiating parties. As an example, Hoekman and Kostecki (1995, pp. 138-141) examine the political economy of the GATS negotiations. GATS was also affected by the lack of any quantitative measures of protection of domestic service providers which could be negotiated in the same way as industrial tariffs or agricultural measures of support.

The WTO should consider eliminating inconsistencies in rules that are not inherent in the nature of trade. However, any inconsistency or difference between 2 rules, say A and B, can be removed either by making A consistent with B or B consistent with A or forming a new rule for both A and B. There is also a prior question of whether rules should be harmonised. To determine in which direction the rules should be amended requires a clear view of where the organisation should be heading. The standard of non-discrimination should guide changes to rules.

Extending Non-discrimination in Goods Trade

Extending non-discrimination in goods trade to achieve universality is chiefly a matter of reducing tariff rates and ntb's. It also involves changing rules in some cases.

For ntb's, we can identify industries in which they are high in absolute terms and relative to tariff rates. *Ad valorem* tariff equivalent rates measure the price effect of ntb's, that is, the wedge between domestic and international prices.[8] A number of developed countries such as the USA, EU and Australia have calculated tariff equivalents of some ntb's. Peak *ad valorem* tariff equivalent rates are sometimes much higher than the peak *ad valorem* tariff rates, indicating that the level of protection given by non-transparent instruments can be very high. (OECD, 1997). This was also the experience with the tariffication of ntb's under the Agreement on Agriculture in the Uruguay Round; average MFN applied rates on tariff lines where ntb's were tariffied are in some countries over 100 and even 200 per cent (OECD, 1997, Table 2).

In principle, each member country could calculate and declare for all tariff items the *ad valorem* tariffs or, when non-tariff border measures apply to any commodities, the *ad valorem* tariff equivalent rates of all border measures. This would reveal the distribution of national rates and, by pooling the distributions of all countries, of global rates. In particular, this would reveal the commodity groups which had the national and global peak rates. However, some countries do not have the capacity to calculate *ad valorem* tariff equivalent rates.

The principle of full non-discrimination indicates that subsidies should be treated like tariffs in the multilateral negotiations, As policy instruments which give protection to the domestic industry and restrict trade, subsidies discriminate against foreign producers. There is a standard equivalence in economic theory between an *ad valorem* tariff on the one hand and an *ad valorem* subsidy on production combined with an *ad valorem* tax on consumption on the other. This shows that subsidies on importable commodities distort production in the same essential way as tariffs, they just do not have the added consumer tax effect which reduces imports further.

Hence, non-discrimination calls for the removal of all production-based subsidies. (This excludes any subsidies on inputs or R & D which are justified by factor market failures, if indeed any such failures exist.) Indeed, this point was recognised in the Agriculture Agreement of the Uruguay Round which negotiated a 20 per cent reduction in the aggregate levels of government support measures. The protective effect of subsidies applies equally to all traded goods and services.

As tariffs and ntb's have been reduced in recent GATT rounds, subsidies have become relatively more important as sources of protection against foreign producers. Australia, which has the most comprehensive and longest time series of *ad valorem* equivalent rates and total rates of assistance, has split the assistance going to domestic producers in each industry into assistance "by form". This enables us to see what proportion of the assistance to producers comes from tariffs and from ntb's collectively. This is done by calculating the "producer subsidy equivalents" of all measures, giving a money metric of assistance to producers. In the agriculture sector, for example, the estimates show that in 1996-97, less than 10 per cent of the total assistance to agricultural producers came from tariffs and export subsidies (Productivity Commission, 1998, Table 3.3), the rest coming from subsidies on inputs and outputs and domestic pricing arrangements. For the agricultural sector, the OECD annually calculates subsidy equivalents of a wide range of measures assisting the agriculture sectors of OECD countries (OECD, 1998).

The WTO discipline on production-based subsidies is weak. GATT 1994 and the Subsidies Agreement permit members to countervail subsidies that distort international trade but the GATT has not endeavoured to negotiate reductions in subsidy rates outside the agriculture sector. For services, the Working Party on GATS Rules is considering the definition of subsidies. There is a need to reduce subsidy rates in this sector too though regrettably there are no estimates of service sector subsidy rates. This differential treatment of tariffs and non-tariff barriers to trade on the one hand and subsidies on the other comes about because subsidies have been regarded as a violation of fair trade, not free trade. This is bad economics. Future rounds might consider negotiation of all subsidies but it would require a major change in the WTO approach to subsidies.

Strictly speaking the rules for National Treatment in Article III should be changed if full non-discrimination is to be achieved. They provide for treatment no less favourable than that accorded domestic producers. This allows for treatment which is more favourable. More favourable treatment is not, however, a problem for goods trade (unlike foreign investment where incentives limited to foreign producers are common).

Extending non-discrimination in services trade means extending market access and national treatment. Because most service trade is not delivered by the mode of cross-border delivery, there are no measures of the distortions of trade comparable to the price wedges that are used to measure the distortions of goods trade. Warren and Findlay (1999) survey frequency measures of restrictions of service trade and develop some new measures. This area is closely linked to the issues of making multilateral rules for investment and competition policy. It therefore raises questions relating to the new issues.

3

New Issues

Four "new issues" have received attention by the WTO to date. The meeting of the GATT Ministerial Council in Marrakesh agreed to establish a WTO Committee to examine the issues relating to the interface of trade and the environment. The First WTO Ministerial Council Meeting in Singapore in November 1996 agreed to establish a Working Group "to examine the relationship between trade and investment" and another Working Group "to study issues raised by members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework." While confirming the commitment to the observance of internationally recognised core labour standards, the Ministerial Meeting declared that "the International Labour Organisation is the competent body to set and deal with these standards."

The three issues that are being considered in the WTO pose quite different architectural problems from those already considered as these new issues are largely outside the scope of the present WTO rules. Each of the proposals to develop these issues in the WTO is highly controversial with some countries in favour of developing rules within the WTO for each issue and other countries opposed, and there are many different views about the design of the rules. The development of new WTO rules in the next or later WTO rounds poses problems for the architecture of the WTO.

Several aspects of each proposal need to be considered. First, there is the fundamental question of whether it is desirable to develop multilateral rules in these areas. Secondly, there is the related aspect of what government measures or policies should be covered by the rules. Thirdly, if new rules are desirable, which multilateral organisation is best suited to accommodate new rules - the WTO or some other multilateral organisation or combination of organisations? Fourthly, each of these issues pose another problem in that there already exists one or more multilateral organisation outside the WTO with some responsibilities in the area. These aspects are now considered in turn.

Should we have Multilateral Rules for Investment?

The strongest case for developing multilateral rules applies to rules relating to foreign investments. In the first place, there is widespread agreement that multilateral rules are needed to regulate national government measures with respect to cross-border investments. Very soon after its establishment, the OEEC (later the OECD) introduced non-binding Codes of Liberalisation of Capital Movements and of Liberalisation of Current and Invisible Operations. A number of other non-binding guidelines and codes relating to foreign direct investment have been devised by the OECD, World Bank and United Nations (see UNCTAD, 1996, Part 3 and Annex Table 13). Beginning in 1995, the OECD attempted to negotiate a comprehensive Multilateral Agreement on Investment (MAI) but the negotiations were suspended in 1998.

The case for free capital movement is essentially the same as that for free trade: both are instances of full non-discrimination and are, therefore, required for efficient world production and consumption. For a capital flow, the measure analogous to a tariff equivalent rate for some quantitative restrictions or ntb is the equivalent rate of tax on profits earned by the capital, that is, the rate of tax on profits which, if substituted for a a particular restriction on capital, would have the same effect on capital profits. Petri (1997, Table 7) makes a bold attempt to measure these equivalent profit tax rates. His calculations show that the equivalent rates of tax on the profits of foreign investors are about one half as high as the tariff equivalent rates on trade in goods. As with tariff equivalents, the equivalent profit tax rates vary greatly from country to country (or region to region if the estimates are available on a region basis only) and sector to sector. They are highest for the service sector in all regions of the world and Japan has the highest equivalent profit tax rate of the regions in the model.

Any multilateral negotiations on investment will have to address immediately the scope of an agreement. One of the difficulties in the MAI negotiations was the very broad definition of investment in this proposal. Investment was defined as “every kind of asset owned or controlled, directly or indirectly, by an investor”. It included, therefore, portfolio investment, securities and short term assets as well as foreign direct investments. It would be desirable to confine an agreement to foreign direct investments in businesses which is an alternative to trade in goods and services and involves the same issues of market access and national treatment. A second difficulty in the negotiations of the MAI was the question of the desirability of rules or guidelines regulating the behaviour of the foreign direct investors. It would be desirable to confine any future agreement on investment to rules regulating the behaviour of national governments and national government measures affecting foreign direct investments. Policies relating to anti-competitive conduct by multinational enterprises could be dealt with under international law which is discussed below.

Should we have Multilateral Competition Rules?

There is widespread agreement these days on the importance of promoting competition in all markets. Economies which trade freely and which are competitive are efficient. This is the First Fundamental Theorem of Welfare Economics developed by Arrow, Debreu and other general equilibrium theorists in the 1950s. It is this theorem which leads to the advocacy of free international trade and of competitive behaviour. However, free trade

and competitive behaviour are each desirable in their own rights; the case for one is independent of the case for the other, though it is true that free trade generally promotes competitive behaviour and more competitive behaviour may lead to an increase in international trade too.

There is, however, much less than universal agreement that multilateral rules are needed to deal with anti-competitive business conduct. The EU supports the development of multilateral competition law. At the other end of opinion, the Governments of Hong Kong and Singapore have maintained in the WTO Working Group on the Interaction between International Trade and Competition Policy and elsewhere that comprehensive national competition laws are not required in national economies which pursue policies of free trade with respect to goods, services and foreign direct investments and whose markets are, therefore, contestable. (For comments on these views, see WTO, 1997, p. 51). Other countries recognise the presence of anti-competitive conduct that affect residents of other countries but are concerned over the weakening of national sovereign powers in any proposals for multilateral competition law and therefore oppose the development of multilateral competition law. This is the view of the US government. Moreover, a majority of the members of the WTO do not have comprehensive competition laws. Member countries presented widely differing views on national and multilateral competition law to the WTO Working Group on the Interaction between International trade and Competition Policy. In its first Report, the Working Group (WTO Working Group, 1998) merely recommended that the educative work of the Working Group continue.

Yet another objection is that some nations will lose when competition is enforced in a market spanning two or more countries. It is sometimes argued that the gains from making markets more competitive are` unlike the gains from freeing trade. When restrictions on cross-border trade are reduced, the exporting country will gain and so will the importing country, unless there are large terms of trade effects in the importing country. By contrast, in some non-competitive market situations, making markets more competitive may yield both national losers and gainers; for example, the elimination of an export cartel or market allocation scheme will make the exporting countries worse off and the importing countries better off. Yet, a more competitive environment is like a repeated game. In the long run, all countries may expect to gain as world markets become more competitive but a short run focus makes this feature an obstacle.

For these reasons, it is not feasible to construct a multilateral competition law at the present time, either inside or outside the WTO. More limited proposals are feasible. One possibility is that the WTO could act as a multilateral agency purely to enforce national competition laws rather than a full-blown multilateral competition authority. Other proposals involve the development of non-binding competition principles, bilateral competition agreements and the use of comity (Lloyd and Vautier, 1999 review these proposals).

Some individual trade-related business conduct could be negotiated in the next round as part of existing Agreements or Articles; this might include greater discipline on state trading, parallel imports, interconnection for service providers beyond the telecommunications sector, and revised rules on anti-dumping action. In addition, the rules of the WTO could be extended to include a prohibition on export and import cartels.

This is a notable omission as these cartels operate at the border and this practice is therefore trade-based. Export cartels will normally benefit the exporting country though they harm the importing countries because of the terms of trade effect, and they are trade-restricting. They may harm the exporting country if it is easier for domestic firms to engage in tacit or overt collusion for the home market as a result of the formation of the cartel or if there is retaliation by foreign suppliers. Cartels occur in markets for services such as shipping as well as markets for goods. A change in the WTO rules to ban import and export cartels could be enforced by national governments.

However, there is no universal agreement on banning these cartels. The competition laws of the largest economies –the US, EU and Japan - all permit export cartels, as do those of several other countries. Martin (1999) concludes that the intended benefits of export cartels in the US have not generally been realised. In 1998 the OECD Council adopted the Recommendations Concerning Effective Action Against Hard Core Cartels which fix prices, rig bids or restrict outputs or allocate markets. Member countries are encouraged to ensure that their competition laws prevent hard core cartels. (OECD, 1998c). However, these recommendations are not binding. It may be difficult to achieve agreement in the WTO on a ban that is binding.

Should we have Multilateral Rules for the Environment?

The underlying economic justification for national and multilateral rules relating to the environment is quite different from that for multilateral rules relating to international trade in goods, services and investment. It is not a question of discrimination against foreigners. It has to do with market failures because of environmental effects.

There are at present dozens of international conventions and agreements concerning environmental effects. Most of these are unenforceable because of the lack of a multilateral organisation with powers of enforcement in the area. As with the area of cross-border competition, the lack of enforceable multilateral law leads sometimes to extraterritorial action which infringes national sovereignty and causes frictions between countries.

It is doubtful whether one set of rules could cover different environmental problems. The nature of the market failure is peculiar to each market. This will make it difficult to combine multilateral agreements or law to one organisation.

The negotiation of a WTO agreement on cross-border environmental effects is likely to be limited to rules concerning the use of trade measures as sanctions in the enforcement of other multilateral environmental agreements, eco-labelling, the export of domestically-prohibited goods and other trade-related matters under discussion in the WTO Committee on Trade and Environment.

The use of trade sanctions is highly contentious. Negotiations of these matters in a new WTO round would be complex. They are probably not feasible in the context of the next round.

The Location of New Multilateral Rules

There has been a tendency to put all new areas into the GATT/WTO, chiefly because it is there and it has a mechanism for enforcing its international law. It has been seen as an expeditious method of getting new rules when there is a perception they are needed.

Indeed, it is the absence of multilateral organisations dealing with foreign investment, competition and the environment that has lead to the incorporation within WTO Agreements of elements of law relating to these three areas and continued pressure to expand the coverage of the WTO. In a similar way, the absence of enforceable law in these areas has led to the Dispute Settlement Procedures being used to test the legality of government measures relating to these three areas. This has led the WTO into new areas that extend considerably beyond the traditional border trade area.

But this tendency has created very substantial problems of inconsistent treatment among different product groups. The WTO interest is in trade-related aspects of investment, competition and the environment. In the long term, the relationships among multilateral organisations and agreements will need to be examined.

One possibility is a set of stand-alone multilateral institutions responsible for different areas. The MAI would have created a separate institution for the investments. Similarly, one might also have a World Labour and Migration Organisation and perhaps a World Competition Authority. The Director-General of the WTO, in opening the WTO High-Level Symposium on Trade and the Environment in March 1999, called for the creation of a World Environment Organisation as an institution and legal counterpart to the World Trade Organisation. The suggested organisations correspond to areas relating to freedom of trade in capital and labour and to an organisation devoted to promoting competition and one to correcting environmental market failures.[9]

These possibilities are a new area of architectural design. A number of factors may favour combining organisations or separating them.

Zampetti and Sauvé (1996, p. 340) raise the possibility of "economies of scope" between rules relating to trade in goods and services on the one hand and those relating to foreign direct investment on the other. If these exist, it may be more efficient to combine them in one organisation. One possible source of economies is that, trade in goods and services is sometimes linked to foreign direct investment. There are instances in which goods trade, the movement of natural persons and commercial presence are all present in the one set of activities. The same possibilities arise with other organisations.

On the other hand, there may be substantial diseconomies of scope if administration is more complex. This is a very real danger if the scope of GATS is extended or if rules are developed in the WTO for any of the new issues.

Where the nature of the rules is similar, it may be desirable to combine the responsibility for these rules in one institution but, where the nature of the rules is substantially different between two areas, it may be desirable to separate them.

Rules for trading goods and services on the one hand and rules for trading capital are similar in some respects. Market access has been defined in recent times, as noted in Section 2, to include market access by means of establishing foreign affiliates. From the point of view of the investor they are alternatives. From the point of view of the countries which import the goods or are host to the direct investments, they pose the same general issues of non-discrimination, including in both cases restriction at the border and national treatment within the border. The main concern in both cases is with multilateral regulation of the actions and policies of national governments. Consequently, adding rules to the WTO which regulate national government actions with respect to foreign direct investments would sit well with the existing rules relating to regulation of national government measures affecting international trade in goods and services.

Because of the broad definition of services to include the modes of delivery by means of "commercial presence" and/or the "movement of natural persons", GATS contains several elements which relate to foreign direct investments. These include both market access and national treatment provisions. TRIMS deals with trade-related aspects of the treatment of foreign direct investments. The Agreement on Subsidies and Countervailing Measures has some application to investment incentives and the protection of intellectual property rights in TRIPS is important to some investments. (WTO, 1996, chapter 4.V outlines the existing investment-related rules and disciplines in the WTO). Altogether, however, these cover only a small fraction of the aspects of foreign direct investment cf. the draft MAI. (The last draft of the MAI can be found on the OECD website http://www.oecd.org/daf.)

There is the option of a new multilateral agreement on investment within the WTO which is separate from GATT 1994 and GATS or the option of a multilateral agreement on investment outside the WTO. Both have the advantages of allowing a universal coverage of investment in all sectors of the economy.

There are several architectural advantages to a new agreement within the WTO. Snape (1998) suggested that, in the event of a new multilateral agreement on foreign direct investment, the provisions of GATS relating to the modes of delivery by "commercial presence" be taken out of GATS and relocated to a new agreement on investment. He made a similar argument for the removal from GATS of the provisions relating to the mode of supply involving the movement of natural persons. The same argument could be made for removing TRIMS to a multilateral agreement on investment.

These actions would remove some major inconsistencies in the internal architecture of the WTO. The coverage of the investment rules would be universal with respect to the goods and services included. The provisions of the GATS which relate to cross-border movements of capital and national treatment apply only to services but the same issues arise with FDI in goods industries. They are not peculiar to the service industries. The provisions of national investment policies and other inter-governmental agreements on investment do not differentiate between goods and services. These actions would also make the GATS more comparable with GATT 1994 as both would be confined to cross-border movements of goods and services. Indeed, it would then be possible to combine the rules relating to trade in goods and to trade in services in one generic set of rules covering all goods and services traded across national borders.

Other inconsistencies could be removed by a new multilateral agreement on investment. It was noted above that the definition of market access in GATS went beyond the elimination of discrimination against foreigners by including deregulation and competition provisions that applied equally to both domestic and foreign investors. National Treatment should be defined to ensure neutrality between foreign and domestic investors, leaving issues of market access because of government regulation and matters of anti-competitive business conduct to be dealt with in other agreements.

(Sauvé and Wilkie, 1999) have advocated an extension of the investment provisions within GATS. This would limit the development of rules to investment in services only. It might also be necessary to exclude some of the areas such as investment protection, investment incentives and performance requirements, which proved difficult in the MAI negotiations. This would essentially confine the negotiations to the liberalisation of border and market access measures for services. Such a pragmatic approach limits the universality of the multilateral regulation of investment and continues the problems of the fractured internal architecture of the WTO. It has the advantage, however, that it may be feasible in the next round whereas the negotiation of a separate agreement may not. As a short-term expedient, this might help to prepare the way for a universal stand-alone multilateral agreement at a later date.

A multilateral agreement on investment outside the WTO would have the same advantages as a separate agreement within the WTO in allowing universal coverage of investment rules and permitting greater consistency within the WTO. The choice between a separate investment agreement within the WTO and an agreement outside the WTO will depend on the workability of the options. A WTO with investment rules may be too cumbersome. Moreover, there are some general differences between the patterns of national government policies in the two areas. For example, most restrictions on capital flows are prohibitions on investing in certain industries or other quantitative restrictions such as requirements to have a certain percentage of domestic capital in joint ventures rather than price wedges; there is little country discrimination (non-MFN) in restrictions on foreign direct investment; government interventions make much greater use of incentives to attract FDI compared to goods trade; and there is no counterpart to investment protection in goods trade.

However, there are basic differences in approach in the case of international trade law and competition law. International trade law, with relatively minor exceptions, concerns measures introduced by national governments whereas competition law examines the actions of individual enterprises. International trade law lays down rules as to what is permitted or not whereas, because of the complexities of individual cases, competition law has moved away from the *per se* prohibition of certain practices towards the rule of reason approach.

Similarly, with environmental regulation, the focus is not on the product but on the process used to produce or dispose of it. From the perspective of the environment, environmentally-friendly output or disposal is categorically different from environmentally-unfriendly output or disposal of the same good. The objective of environmental agreements is to legitimise discrimination between sellers of goods and services on the basis of their environmental effects whereas the objective of the WTO is to remove it. Under the rules of the WTO, shrimp caught in turtle-unfriendly nets are no

different to those caught in a turtle-friendly net, hormone treated beef is no different than untreated beef. Differentiation between goods on the basis of environmental effects conflicts with the principle of non-discrimination between products which are physically the same, which is the traditional interpretation of the like product concept that underlies Article I of GATT 1994. When it does allow the use of trade restrictions in certain circumstances, as in some areas of standards (the SPS and TBT Agreements), the WTO uses scientific evidence to justify them whereas some Multilateral Environmental Agreements, such as the Agreements on Biodiversity and Climate Change, use the much broader Precautionary Principle. This is a fundamental difference in approach. (Restrictions on trade based on breaches of some labour standard in the production process pose the same conflict with trade law.)

It is possible to define non-discrimination in terms of a larger set of characteristics that included environmental features, labour standards and other characteristics. Non-discrimination would then mean that all imports of, for example, environmentally-friendly and physically like products would be treated equally. Imports which breached environmental or other standards could be restricted.

The fundamental reason for not pursuing this path is that such non-discrimination would lead to inefficient production and consumption allocations. Breaches of an environmental or labour standard are not usually confined to goods which are traded internationally. The first-best (efficient) intervention is one which applies to both internationally and domestically traded sales. The limitation of the intervention to international trade fails to correct the market failure; for example, restrictions on trade provide no incentive to control the loss of habitat for species threatened with extinction. And, unless the market failure is reduced by a restriction on trade, it imposes loss of gains from trade.

Furthermore, separate areas may be more likely to achieve universality of commodity coverage; for example, in the areas of foreign direct investment, competition law and the movement of natural persons where the existing and proposed provisions of the WTO cover only a small fraction of the areas. This is a most important aspect.

Overlapping Multilateral Organisations

The final aspect of the external architecture of the WTO is the existence of multilateral organisations outside the WTO with responsibilities in regulating trade which overlap those of the WTO. There are a number of sector-based multilateral organisations which overlap with the WTO in its administration of its existing rules. The International Telegraphic Union is responsible for spectrum allocations which is an important part of the regulation of telecommunications trade. Shipping services have traditionally been subject to weak multilateral discipline. The 1974 UNCTAD Code of Conduct for Liner Conferences regulates some aspects of conference trade but it is a plurilateral code and the US and some other states offering “flags of convenience”, which are designed to circumvent international rules, are not members. (The International Maritime Union (IMU) was established in 1958 under UN auspices but it deals mainly with issues of safety, pollution and other issues which are distinct from trade and competition.) In the area of air transport services, there is no multilateral organisation regulating the behaviour of national governments in relation to air transport services. (The International Civil Aviation Organization is an inter-governmental organisation that deals with technical and

safety issues.) The World Intellectual Property Organisation (WIPO), also located in Geneva, administers the Paris Convention (on patents and trademarks), the Berne Convention (on copyright), the Rome Convention (on performers and broadcasting) and several other conventions. ILO and UNESCO also administer a number of IP conventions. TRIPS extends the minimum standards in these conventions and is enforceable under the WTO Dispute Settlement System.

Article XXVI of GATS requires the General Council of the WTO to make appropriate arrangements for consultation and cooperation with the UN and its specialised agencies and other intergovernmental organisations concerned with services. Similarly, TRIPS requires the Council for TRIPS to consult and cooperate with WIPO. However, there are important conflicts between the trade-related provisions of TRIPS and GATS on the one hand and those of other multilateral organisations which need to be unified.

In the long term, the issues go well beyond cooperation. Thought needs to be given to the rationale for the coexistence of overlapping institutions, as outlined above.

If there are a number of separate multilateral organisations, it is even possible that they might be linked under a World Economic Organisation as an umbrella. This would parallel at the world level the organisation of the European Commission with its Directorates-General, though one would seek a smaller number of organisations than the 14 Directorates-General!

4

There is substantial incoherence in the internal and external architecture of the WTO. This architecture has been formed in an *ad hoc* fashion as new agreements were added. The internal architectural features detract from the equality and universality of the commodity and geographic coverage of the WTO rules. This allows some major deviations from full non-discrimination to persist, and in many cases these deviations have not been subject to the liberalisation in previous GATT multilateral rounds. The external architectural features result in less than universal coverage of binding multilateral rules for investment, competition law and environmental law. There are important conflicts between the trade and trade-related provisions of the GATT 1994, GATS and TRIPS and those of other multilateral organisations. Internal and external architectural incoherence has inhibited the elimination of discrimination against foreigners. This is the reason why these features should be addressed.

It will not be possible to address many of these incoherences in the next round. The scope of a new round must fit within the time constraint imposed by the members. The Built-in Agenda should allow those features which arise from the architecture of the GATS and TRIPS to be addressed. Other incoherence relating to existing rules might also be addressed; this could apply, for example, to rules for subsidies in both goods and service trade, unfair trading and import and export cartels. In the area of the "new issues" priority should be given to investment issues over trade and competition and over trade and environment issues for the reasons stated in the previous section. However, these investment issues are very large and complicated, even if there is a will in the WTO to

address them and if negotiation is restricted to government measures applying to foreign direct investment. They may be better developed in a new multilateral organisation.

The negotiations would be facilitated by the formation of a negotiating group similar to the Functioning of the GATT System (FOGS) group that was created by the Punta del Este Ministerial Declaration establishing the Uruguay Round. FOGS had a major influence on the outcome of the Uruguay Round. In particular, it was in FOGS that the suggestion of a new organisation was first mooted. Two of the three areas designated for negotiation in FOGS are closely related to the architectural concerns discussed in this paper. They are the intention to develop understanding and arrangements "…(ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, *inter alia*, through involvement of Ministers" and (iii) to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening the relationship with other international organizations responsible for monetary and financial matters" (GATT Ministerial Declaration, 1986). These areas correspond roughly to the internal and external architectural features of the WTO. However, the scope of concerns is now much greater as the WTO has many new areas of rule-making that were not in the GATT and new issues have emerged. Consequently, there are more areas of incoherence within the WTO system and of overlap with other multilateral organisations. The group might be called the Function of the Multilateral System (FOMS).

The starting point to address all of the incoherence in the WTO architecture should be the objective of full non-discrimination in the world. The universal pursuit of non-discrimination in the world economy should guide the direction of future reforms of the world trading system.

FOOTNOTES

* I am grateful to Hyun-Hoon Lee, Patrick Low, David Robertson, Gary Sampson and Richard Snape for their helpful comments on an earlier draft of the paper.

1. GATT Article XVI prohibits export subsidies on other than primary products and the Uruguay Round Agreement on Subsidies and Countervailing Measures prohibits subsidies based on the use of domestic over imported goods.

2. The EU has signalled that it will resist reforms going beyond those recently agreed to by the European Council in Agenda 2000. The EU Agriculture Commissioner is reported as declaring that the package is the most radical reform ever carried out in the history of the CAP and stating that "critics of the CAP had always had difficulty understanding its underlying philosophy and the attachment EU governments and citizens had to ensuring the protection of Europe's rural heritage." (Australian Financial Review, 1999).

3. These are the Agreement on Technical Barriers to Trade, the Agreement on Government Procurement, the Interpretation and Application of Articles VI, XVI and XXII (known as the Subsidies Code), the Agreement on Implementation of Article VII (known as the Customs Valuation Code), the Agreement on Import Licensing Procedures and the Agreement on Implementation of Article VI (known as the Anti-Dumping Code).

4. Some rules relating to aspects of FDI crept into the Uruguay Round agreements, most notably those relating to market access in the GATS and especially in the subsequent Agreement on Basic Telecommunications. The negotiations relating to the Movement of Natural Persons during and after the Uruguay Round ended in agreement among only 6 members in 1995. This category of international migration has come to be regarded as a part of the freedom of movement of capital but it is a part of the international migration of labour too.

5. Statistics of both tariff rates and non-tariff measures show these two sectors as still having levels of average tariff rates and incidence of ntb's which are much higher than all other sectors. (For evidence relating to the OECD member countries, see OECD, 1997, and for evidence relating to the Developing Countries, see Drabek and Laird, 1998 and Ingco, 1995).

6. The Agreement on Services provides for the negotiation at some future date of rules providing safeguard measures and measure relating to subsidies.

7. It was one of 4 such agreements which proved too difficult to finalise on a multilateral basis but subsequently two of these, the International Diary Agreement and the International Bovine meat Agreement, have been terminated.

   The service sector agreements that have been concluded since the Uruguay Round – the Agreements on the Movement of Natural Persons, Financial Services, Basic

Telecommunications and Information Technology – are plurilateral in nature as not all members have signed the agreements.

Some of the plurilateral agreements are plurilateral with discrimination (the Agreement on Government Procurement) and some are plurilateral agreements without discrimination (Financial Services and the ITA).

8. For some ntb's, a given price effect may yield different production, consumption, or revenue than a tariff with the same price effect. In these cases, the ntb and the tariff are said to be non-equivalent. In principle, one can model all effects of an ntb more fully but this is rarely done. In practice, the only measures available are "tariff equivalents" rates for the price effects or incidence measures.

9. This also raises again the question of the interrelationships between the IMF and the WTO. The role of exchange rates and changes of competitiveness due to changes in real effective exchange rates are more important in an era of floating exchange rates.

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