CHAPTER 5

THE EXPANDING MANDATE OF THE GATT: THE FIRST SEVEN ROUNDS

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5.1 INTRODUCTIONS

BORN in an era of international economic and political turmoil caused by the destruction of the Second World War and the advent of the Cold War, the General Agreement on Tariffs and Trade (GATT) improbably lasted for nearly half a century as the chief multilateral forum for negotiating the reduction of trade barriers of its member states. The GATT was originally conceived as the tariff-bargaining forum for a more comprehensive trade body, yet that big institution did not exist until the World Trade Organization came into being in 1995. In the meantime, the GATT operated as a trade treaty, a forum —it was an agreement rather than a formal organization— approximating the Bretton Woods monetary institutions of the IMF and World Bank. But, unlike these financial mechanisms (which did not last past the 1970s), the GATT endured because it became more than an effective tool for reducing tariffs and promoting global growth in trade. It was also a means of discussing a wide range of international economic problems and a weapon in the security arsenal of the Free World against communism.

The GATT's long span of success derived mainly from its focused effort to reduce trade barriers, and mainly tariff levels, and the steady institutional, structural, and programmatic growth that derived from the expansion in world trade. This happened in two stages—over the first seven rounds of negotiations during which the GATT evolved—that will serve as the chronological framework of this chapter. From the first negotiations in 1947 at Geneva through talks concluded in 1961, the GATT placed trade and tariffs in the context of post-Second World War *recovery* in Europe and Asia. This reconstruction era was the formative stage of the forum, as the GATT added new members and fixed tariff levels in Western Europe as its primary aims. When recovery was evidenced by the vigour of the European Economic Community as well as the reinstitu-tion of currency convertibility, the GATT entered its second phase of *competition*. In this period, it adapted the trading system to growing trade pressures on the hegemonic United States from Europe and Asia, as well as to demands for equity from the burgeoning Third World. The competition phase began with the Kennedy Round in the mid-1960s and lasted through the late 1970s. By the time of the Uruguay Round, the eighth set of negotiations (see Chapter 6), the GATT was poised for a new phase of expansion.

The GATT added members and changed according to demands and the economic needs and requirements of various nations, but it remained single-minded in its pursuit of addressing a myriad of trade barrier issues in a multilateral fashion. Over the years, GATT negotiating 'rounds', as the eight multilateral meetings that occurred from 1947 to 1994 were called, considered a host of topics. But the forum's mission of trade liberalization was so entrenched that many of the top concerns of nations—such as Third World development—became the responsibility of other organizations. In the end, nations easily inserted the GATT into the larger World Trade Organization (WTO). Before it ended its reign after the Uruguay Round as a stand-alone forum, the GATT incorporated trade rules, customs, and barrier reductions—along with institutions to maintain and enhance such liberalization—into the capitalist world economy. This was all the more remarkable if one considers that, when it began, GATT lacked an institutional framework, a secretariat to administer it, and legal ties to an organization (because its parent body, the International Trade Organization, never materialized). It was simply an agreement, but it did more than survive. The GATT became a 'major force' in the international economy.[1]

5.2 The GATT philosophy

The GATT developed from fears of a return to the 'beggar-thy-neighbour' protectionism of the Great Depression and the need to bring recovery, stability, and growth to the world economy in the wake of the Second World War. The United States and the United Kingdom orchestrated its creation. American Secretary of State, Cordell Hull, was a staunch believer in the link between liberal trade and national security. He did not pursue the impossible dream of outright free trade, for politics in all nations inhibited a dramatic lifting of tariff and other protection for domestic producers. However, Hull did tie a philosophy of fair treatment (non-discrimination), equal opportunities, and orderly exchanges in national markets to the promotion of peace. In his view, an open-door commercial system, based on multilateral negotiations of trade barriers and a market ethic, would prevent a headlong descent into regimentation that led 'to the suppression of human rights, and all too frequently to preparations for war and a provocative attitude toward other nations'.[2] He also frowned on restrictions on the flow of gold, but detested even more the economic nationalism implied in the British system of imperial trade preferences. As the chief trade negotiating arm of the government, the Department of State followed his lead in working to pry open closed doors to trade around the world. Hull set the standard for the pursuit of market capitalism as a pillar of US trade policy, and as a foundation for the process of later globalization under the WTO.

The British held to the same general philosophy of seeking lower trade barriers and the promotion of global prosperity through multilateral commercial agreements, but they stomached discriminatory policies because of their prostration from the Second World War. During the war, British leaders such as James Meade and John Maynard Keynes had produced the first templates for a trade negotiation forum and a larger commercial union during the war. They also determined to protect Britain's vulnerable economy by guarding its imperial trade networks through discriminatory practices. While not necessarily preferring state trading, Britain nonetheless accepted regulations on imports, special arrangements for agricultural trade, and even government-run trade regimes as permanent fixtures in the trade system. In its feeble economic state, the country simply could not yet join the type of multilateral commercial system, based on large-scale and largely unfettered trade barrier reductions, that the Americans desired. Anglo-American debates over the purpose, course, and nature of the trade system resulted in an approach of 'modified multilateralism'. British protectionism would temper the American push for free trade, although the United States was not an advocate of an outright embrace of unfettered markets either. Freer trade and protectionism were juxtaposed; politics sometimes trumped economics under the modified multilateral regime. The GATT—the tariff negotiation protocol designed to bind or reduce rates—would push forth as vigorously as possible with bilateral cuts, multilateralized to other partners, amidst the political pressures surrounding the trade regime.[3]

The modified multilateral order that evolved in the post-war period under the GATT was less an assault on national sovereignty—for recovery and reconstruction demands required countries to protect their economies—than a general thrust towards opening markets. Essentially, all nations did not pretend to seek unregulated commercial relations. Each had domestic constituencies vulnerable to import competition, each struggled to normalize their economies during peacetime, and each had interests that superseded the theory behind market ideology. In short, there was never a chance for pure economics to dominate the politics and diplomacy of trade; the GATT occupied a place where globalization emerged between trade and diplomatic visionaries and pragmatic politicians. The advent of the GATT in 1947 involved a multilateralist drive for installing free enterprise practices, which themselves were buffeted by protectionism. In doing so, the GATT 'set out principles for the conduct of commercial policy' to ensure that the cardinal post-war objectives of trade liberalization, and the avoidance of another Great Depression, came to pass.[4]

5.3 The recovery phase

5.3.1 Geneva Round, 1947

As the drama played out over the ill-fated International Trade Organization (ITO), the GATT pressed on with trade liberalization, although not at a universal level. That is, the advent of the Cold War narrowed the GATT's mission to the recovery of the Western nations allied with the United States against Soviet-led communism, along with other major regional initiatives in trade and finance (such as the

European Payments Union) promulgated by the European Recovery Act, or Marshall Plan. Thus, the American-led GATT pressed for European regionalism as a means of recovery, and ultimately the political stability, of the Free World. Such an approach also allowed for discrimination against US goods within Europe, as the means of boosting reconstruction of industries and agriculture, and aimed to ensure that governments remained liberal and leaned towards a pro-capitalist ideology. From its very inception, the GATT allowed for the exception of discriminatory customs unions and free trade areas (under Article 24) because contracting parties believed that such trade arrangements would contribute to world growth and lead to further liberalization at the multilateral level. Both reasons supported the security argument.[5] In the first rounds, the goal was to 'bind'—or fix—national tariff levels in place so they could not rise. This entailed negotiations through the 1950s that froze European tariffs at existing levels, binding them as the European countries gradually removed quantitative barriers and foreign exchange controls.[6] In this way, the United States linked diplomatic concerns over the Cold War to the GATT trade system by maintaining the drive toward liberalism while encouraging European integration to solidify the Western alliance against communism.

The landmark Geneva Round of 1947 set the initial rules for the GATT and principles under 24 Articles, with the stress first on liberalizing trade but not to the exclusion of protective measures. The first, and most fundamental, Article called for general most-favoured-nation treatment. All the GATT signatories (called 'contracting parties') would not discriminate against others, so that all received the same treatment. The GATT devised an innovative way to facilitate the non-discrimination principle in trade negotiations by having pairs of countries deal bilaterally with products in which each was the other's principal supplier. Then, under the most-favoured-nation process, concessions granted in these bilateral deals would extend to all participants. Another Article provided for equal, non-discriminatory 'national treatment' when it came to the regulatory standards for imports competing with domestic goods. Other Articles allowed for deviations from the most-favoured-nation clause, such as allowing for measures to safeguard payments balances, use of subsidies, and resort to state-trading practices. And Articles 14, 20, and 21 explicitly permitted exceptions to the principle of non-discrimination on specific grounds of security or simply on a general basis. Customs unions—inherently discriminatory—were also allowed, while there would be a gradual, and not immediate, elimination of quantitative barriers.[7]

Multilateralism was modified even in the very process of bargaining. For example, contracting parties adhered to reciprocal (not unilateral) negotiations, then spread concessions reached through the bilateral talks on a multilateral basis. This proved to be a cumbersome method of reducing or binding duties. It reflected protectionist pressures, especially in the United States, where trade law prohibited sweeping tariff cuts. Nonetheless, strict reciprocity and the bilateral-multilateral approach allowed the American State Department to take the lead and push for GATT-wide concessions. Seven months of discussions in 1947 in Geneva resulted in 45,000 tariff concessions that affected $10 billion in trade. This was a notable achievement considering the enfeebled post-war state of

European economies and a US Congress that hesitatingly accepted freer trade and sapped the political will to lower trade barriers.

The actual results for trade at this first Geneva Round were not as important as the acceptance of the GATT itself as the global trade institution. Indeed, the GATT did not enter definitively into force because the 23 nations that participated at Geneva would not subject all of their trade to the Agreement. Article XXVI of the GATT protocol required the GATT to remain provisional until negotiations covered at least 85 per cent of world trade. There were also major gaps in the GATT's coverage—economic development, cartels, trade in services, state-trading—that were controversial and the responsibility of the stillborn ITO. The GATT stuck to tariffs and trade for the near future, although its lengthy and non-binding dispute settlement mechanism proved a weakness, because it allowed nations to prevent decisions arising from negotiations from going into force.[8] Provisional and purposefully weak—but flexible and adaptable—the GATT conceived at Geneva compromised between classical economics and politics to facilitate movement towards freer trade.

5.3.2 Annecy and Torquay Rounds

In 1948, the GATT was officially born when the Geneva concessions came into effect, and the timing of international events, mainly the intensifying Cold War and the rejection of the ITO, influenced the two following rounds. Both granted some additional tariff concessions (5,000 and 8,700 concessions respectively), but their main accomplishments lay in the additional countries added to the list of contracting parties. Eleven nations acceded to the GATT at Annecy in 1949, where the United States proved to be the only nation willing to cut tariffs significantly. Britain still faced economic collapse at this point and therefore insisted that America grant more concessions to close the dollar gap that put its currency at risk. Compared to the Geneva Round, Annecy's results were modest. All nations hoped that the passage of the ITO would further the cause of comprehensive multilateral trade liberalization, but that was not to be. The United States withdrew support from the ITO in 1950.

The same year, the Torquay Round, where six more nations acceded to the GATT, reduced tariff levels of 1948 by one quarter, but it, too, was an unimpressive show for the new forum. The British Commonwealth permitted no more than nominal tariff concessions on its discriminatory imperial preference system. The Americans again stepped forward with a healthy list of concessions, most of them tariff cuts and not bindings, but the Europeans believed the United States should do much more. When the British would not budge on their offers, Washington aborted talks with London, and the Torquay Round of 1950 came to a sputtering end that raised questions about the very relevance of the GATT.[9] The forum awaited a more peaceful climate and, above all, more favourable news of European recovery. Nonetheless, as one trade historian has noted, the GATT was a 'political miracle' considering the political and economic problems facing the transatlantic partners in the post-war world.[10]

5.3.3 Geneva II and Dillon Rounds

By the mid-1950s, as the reconstruction of Western Europe emerged and the region forged its customs union, Geneva hosted another GATT round. Twenty-six nations cut $2.5 billion worth of tariffs, but US reciprocal trade legislation limited American offers, to the chagrin of the Eisenhower administration. The White House sought vigorous trade liberalization, but congressional protectionists—many in the President's own Republican Party—were wary of the GATT and other internationalist organizations. Much of the momentum forward for concessions arose from the accession of West Germany and Japan to the forum. Their membership indicated the reconstruction of the post-war world, though not without controversy. The British Commonwealth especially resisted Japanese membership because of wartime memories of Japan's barbarity and predatory economic practices. Admitting Japan to the GATT after the American occupation was over in 1951, however, was critical to an Eisenhower administration that sought to link free trade to security in Asia. Japan became a contracting party in 1955, in readiness for the Geneva II Round, but only after a series of bilateral tariff negotiations with the United States pointed Tokyo towards liberalization.[11] By this time, there were added problems related to Japanese competition, such as growing concern in the United States towards the inflow of cheap textiles from the country.

Textiles, the rising European Economic Community (EEC), and an emerging imbalance in American international payments prompted by European reconstruction were the subjects of the 11-month long Dillon Round (named after the US Secretary of State) in 1960–1 that concluded the first, or 'recovery', phase of the GATT. The prime focus was on the New Europe of the Six and American concerns about the transformation in the balance of economic power among the capitalist nations. Despite some $4.9 billion of tariff concessions, it was clear by the end of the Dillon negotiations that a reform, if not an overhaul, of the GATT system was in order. By this time, the United States suffered an increasingly severe balance-of-payments deficit, and consequent drain of gold from its coffers, as Western Europeans cashed in their glut of dollars for bullion. That this deficit might lead to lessening America's security commitments overseas was a frightening prospect for Washington as well as its allies. An answer lay with the rising EEC, or Common Market. This customs union discriminated against outsiders by favouring treatment of internal trade and establishing both a common external tariff for manufactures and a highly protectionist common levy and quota system on agriculture imports. The Americans welcomed the EEC as a powerful trading partner but realized the time had arrived when Europe (and Japan) had recovered from the war. Thus the GATT regime moved into a new era. The old GATT-security nexus held: as President Dwight Eisenhower announced in 1959 on the eve of the Round, the objective was 'the establishment of a less restricted international trade which will foster greater strength and solidarity among the nations of the free world'.[12] But now there would be more competition.

In 1961, as the Kennedy administration readied bold liberal trade legislation to address the altered economic order wrought by the Common Market, negotiators at the Dillon Round realized they were playing with an old deck of cards. Tariffs were still significant barriers to trade, but the EEC's agricultural policy and continuing American protection of its farm sector was one area in which non-tariff obstacles had become obstinate problems in the GATT. The contracting parties had never dealt with a customs union of such magnitude as the EEC. The Dillon Round centered on bilateral talks between the United States and the Common Market that revealed that modified multilateralism was as strong as ever. America, however, woefully lacked negotiating authority equal to the task of meeting the EEC's dynamic challenge. The GATT, moreover, had to expand its mandate to range into a host of global trade issues. The Dillon Round marked the end of the era of recovery, and the beginning of the age of competition in the GATT system.

This was no more clear than in the US-EEC bilaterals. GATT rules stipulated that the Common Market had to compensate other nations faced with higher duties because the Six were poised, on 1 January 1962, to adjust tariffs upward. The low-tariff Germany and the Benelux nations had to raise their individual tariff rates towards the higher French and Italian duty levels to establish the common external tariff. To do so, the Six broke prior tariff-binding commitments amounting to $2 billion worth of imports, and were thus required to offer compensatory concessions to other nations on other EEC products to offset the losses. The Common Market resisted, however, arguing that lowering Franco-Italian duties in the common external tariff was compensation enough for outsiders. The Americans finally wrangled $1.6 billion in concessions, but much less than they had originally sought. The Six refused to bargain further.

The Dillon Round extended four months past its original deadline because of this compensation issue, as well as obstacles to liberal trade in the farm sector and a stymied bargaining process itself. The round ended in autumn 1961 after a severely circumscribed deal on agriculture that gained the United States duty-free bindings on a handful of goods, including soya beans and cotton. Although commodities were of the utmost importance to the

Americans because the EEC bought nearly one-third of US farm goods, the Common Market offered no more because its common agricultural policy (CAP) levies were still in the design and discussion stage. For its part, the EEC chafed at the timidity of the US tariff-negotiating authority that prohibited the broad, sweeping cuts by sectors and categories used by the Six. Because American law permitted only item-by-item reductions, the EEC withdrew some of its concessions. The Dillon Round, like its predecessor, ground to a halt. All sides realized reform, prompted by new competitive pressures, was in order in the GATT system.[13]

The need for an overhaul was all the more pressing because of the emergence of Third World nations by this time. Many of them were fresh from colonialism. They joined others to raise demands in the United Nations and elsewhere for aid through special trade arrangements because they participated in the GATT regime. The emerging nations spoke directly to the modified multilateral ethic, for many sought preferential trade ties that smacked squarely up against the GATT's non-discrimination clauses. Yet they also asked for other help in light of their needs and lack of options after their failed attempt at import substitution during the 1950s. The Bandung conference of 1955 had set out their neutralist agenda in the Cold War, and in trade they hoped to diverge from the GATT regime by demanding that the advanced nations set aside their insistence on reciprocity to boost infant industries. They targeted the American-led GATT, but soon realized that this forum of traditional trade liberalization would offer little assistance short of minor concessions.

The way forward for the Third World was to create an organization separate from the GATT—the United Nations Committee on Trade and Development (UNCTAD)—in the following decade and gain preferential treatment that way. The United Nations, which had declared the 1960s to be the Decade of Development, would be the tool for prosperity and reform of the GATT system. The push by the Third World for special development provisions would continue in the succeeding decades, and most recently as a special agenda at the Doha Round in 2001 (see later in this volume). The Dillon Round revealed that the GATT—and the United States—faced challenges from all quarters at the end of the recovery era.

5.4 The competition phase

5.4.1 Kennedy Round, 1963–7

Agreement between the United States and the Common Market was the focal point of the Kennedy Round, the sixth set of GATT talks. Armed with President John Kennedy's bold Trade Expansion Act, American negotiators aimed to slash tariffs on manufactures by half (and minimize protectionist exceptions), liberalize the Common Market's agricultural policy, take GATT's initial major stab at reducing and preventing non-tariff barriers, and meet some of the demands of the Third World. As in earlier rounds, the bilateral results would be multilateralized to the eventual 62 participants at the Kennedy Round, including seven members of the other European trade bloc, the European Free Trade Association.

The Kennedy Round lasted 37 months, 11 months longer than the previous record set at the Dillon Round. It yielded tariff concessions amounting to $40 billion of world trade—four times the previous mark set at Geneva in 1947. The deal encompassed 80 per cent of world trade. Because it occurred during a major transformation in global economic power, due to the rise of the EEC and accompanying challenges to the hegemonic position of the United States in the Western alliance, it was a pioneering round of the GATT. Also, as America's lead negotiator later reflected, it occurred when 'economic issues were not understood to be that critical politically'. Thus, policymakers made decisions regarding the GATT that had a bearing on future international relations at a time (unlike the following decade) when the world economy took centre stage.[14] Still, the Kennedy Round also reflected hard-fought progress, won against a backdrop of rising global protectionism. Modified multilateralism not only seemed the order of the day in the GATT, but the doctrine veered the trade forum towards more discrimination despite the Kennedy Round's healthy dose of liberalization.

This first round of the GATT's era of competition began with strategies designed to adjust nations to a transformed economic world. The Americans linked trade firmly to security, arguing that faster growing Western Europe was fully capable of bearing a greater share of the alliance burden by absorbing more US exports, particularly in the agricultural sector. Washington launched its first trade challenge against a post-war Europe in which it had tolerated discrimination because this approach encouraged regional integration and enhanced competitive capabilities. The Europeans would now have to acknowledge that trade went hand in hand with security, and therefore help to rectify the US payments deficit. In the EEC and Free Trade Association, the goal at the Kennedy Round was to raise exports to the lucrative American market. The Common Market, in particular, realized it had leverage because it was negotiating for six nations as one unit. After much (and continuing) internal strife over the extent of the common agricultural policy, the EEC would be armed with a protectionist bargaining chip with which it could confront the United States.[15] The GATT negotiations witnessed the clash of two competitors playing on the most equal ground since the war.

In industrial sectors, the Kennedy Round reaped some major rewards for traders. Although the Common Market claimed that its rates on manufactures were generally lower than America's, the disparity did not preclude a robust agreement that slashed duties on industrial products by an average of over one-third of their previous levels—and on a value of goods eight times the amount of the Dillon Round. Disparities among nations disappeared. America's highest tariff rates fell, and, in general, US duties plunged by nearly two-thirds of their previous levels. European tariffs fell by half. In Tokyo, Japanese officials applauded as their bilateral deals, especially with the United States, yielded largely one-sided benefits for their country. Regarding non-tariff barriers, officials reached a compromise on chemicals. The Europeans lowered their tariffs in exchange for America converting its pernicious American Selling Price (ASP) to a normal customs valuation method. (The ASP was a protectionist measure that originated in 1922 to protect American chemical producers from German competition.) The provision jacked up tariffs by 60 per cent, basing duties on the current US price of chemicals rather than the value of the imports, and thereby severely limited imports. Congress refused to eliminate the ASP, thus undercutting the deal, but in the process spurred the White House to adopt the fast-track process before the Tokyo Round in 1974 to avoid protectionist interference. Most noteworthy was an Anti-Dumping Code that was later revised at the Tokyo Round and indicated the GATT's new interest in addressing non-tariff barriers. In reality, the significant lowering of traditional tariffs in the GATT had prompted the rise of non-tariff barriers; the trade forum was a victim of its own success.

Yet the EEC's common agricultural policy proved to be the biggest disappointment for the United States. The CAP proved that GATT's modified multilateral approach did not always result in progress towards liberalization. The average tariff cuts in the sector were a measly 20 per cent of prior levels. The maintenance of CAP levies on grains and poultry, among other major items, meant that the United States received no access guarantees to assure future sales. As a result, American farm trade to the region began to stagnate, putting greater pressure on the payments deficit (and on presidential initiatives at home to pursue liberal trade policies). Agriculture promised to be the major issue facing the advanced nations in the GATT in the next decade, but the tone had been set: no country was willing to subjugate its farmers to the winds of free trade competition.[16] As serious, the failure in the sector gave rise to the notion among American congressional critics that the GATT regime's leader, the United States, had given 'away the store for the sake of gaining political foreign policy advantages'.[17] Protectionists and freetraders alike accused the Kennedy and Johnson administrations of allowing gains for trade partners at the expense of the home market to ease relations within NATO and further security commitments. Not undercutting the CAP was the prime example of a supposedly soft-pedalling negotiation strategy on the part of the United States. The failure against the CAP raised the ire of producers and Congress, and fuelled protectionist attempts to gut trade liberalism and the GATT itself.

The Kennedy Round fell short of the high ambitions set for it by American and European leaders, so much so that some analysts began questioning whether the GATT itself had outlived its usefulness. Slashing tariffs overall by over a third still fell short of the halving sought under the Trade Expansion Act. Certainly, the GATT had an 'unquestioned achievement', wrote expert William Diebold, of producing major reductions in trade barriers while solving disagreements and avoiding others.[18] But trade in farm goods turned into a bête noire within GATT, as a myriad of creative protectionist devices guarded home producers. Traders from the poor and developing world welcomed an aid commitment of ten million tons of grain (one quarter sent by the EEC and two-fifths by the United States), but they made little headway in using the GATT as a platform to push for preferential trade arrangements. And the Americans sought the donation to keep surplus European grains off commercial markets, while the ten million tons fell short of the initial goal targeted for development aid. The contracting parties settled on an International Grain Agreement but the price levels were too high and thus distorted trade in favour of less efficient producers in Europe and elsewhere. In addition, the EEC refused to open its market to outsiders enough to give them a greater quota on grains. Fighting back protectionist thrusts at home (where tariff hike and quota bills numbered over 700 in Congress), President Lyndon

Johnson warned of the stress in the GATT as well as the greater free world alliance. ‘We can emerge stronger and more mature’, he said, ‘or we can dissolve into rival islands.’[19]

The security-trade nexus was as present as before. In fact, general foreign policy objectives had driven Kennedy to propose his ambitious programme of trade liberalization in the GATT in the first place. In 1962, the Trade Expansion Act had transformed US law by allowing for sweeping, across-the-board tariff cuts of up to 50 per cent; previous legislation going back to the advent of the Reciprocal Trade Agreements Act of 1934 had granted the President authority to bargain down duties only on a cautious, item-by-item basis. But Congress required a trade-off by tempering such a push for free trade with a significant reorganization of the liberalization programme. A special United States trade representative (USTR), operating out of the White House, would handle negotiations. Rather than the foreign policy (and liberal) State Department, the USTR, from this point forward, would have an eye on the politics of trade and on the interests of domestic producers and labour, rather than the State Department’s traditional perspective on the impact of trade policy on other nations. By the later 1960s, trade expansion did not seem to be an answer to protectionist trends. Domestic producer and labour outcries, slowing growth, and competition altered the international economic landscape, and certainly the American political scene when it came to trade. Congress refused to renew trade negotiating authority until 1974, and when it did, it insisted on the USTR as representative for the United States. If indeed there was warfare, it was between Congress and the

President, and between GATT partners themselves, rather than against the communist enemy.

The Common Market had not fallen apart (an earlier concern of policymakers) but instead had changed the course of history within the GATT. That transformation pointed to larger concerns. Were the founding principles of GATT, non-discrimination (including non-preferential trade under the most-favoured-nation practice and cautious allowances for customs unions) and outlawing of quantitative restrictions, obsolete? Were GATT rules against the necessary exceptions due to payments difficulties, poverty, or limitations on regional trade blocs outmoded? Was the equanimity of shared ambitions, values, and goals of 1947 a figment of the past? In the words of one analyst, was this the 'Twilight of the GATT'?[20]

Reform of the entire GATT system was in order. Officials turned to the seventh round to effect such change. The Kennedy Round had been the first GATT negotiations to go beyond tariffs to deal with non-tariff barriers, and the first to address the concerns of the developing world. It was the first to be bogged down by agricultural trade conflict and the first round in which Europeans had crafted policies challenging the hegemony of the United States.[21] The Kennedy Round, therefore, indicated that the GATT must, once again, adapt to new circumstances and pressures.

5.4.2 Tokyo Round, 1973–9

In the face of heightened calls for protectionism at home, Washington restarted the momentum for trade liberalization through modified multilateralism in the GATT by calling for a new trade round. Congress passed the Trade Act of 1974, which armed the United States with tools to combat protectionism at home and abroad. To answer domestic outcries, the legislation required deeper and quicker investigations into protests by industry about imports and also authorized the president to find ways to eliminate unfair practices abroad against US exports and investment. Free traders got satisfaction, too. For the first time, the power of Congress to amend or filibuster against a trade agreement was reduced; the president could 'fast-track' GATT accords through the legislative process, on an up or down vote, without fear of a long debate inspired by protectionists. It was likely that Congress would pass through most agreements. That Congress granted fast-track authority to the Executive branch at the very time President Richard Nixon was being removed from office stunned the contracting parties. (Although preoccupied with the impeachment process, Congress managed to carry on with normal business through legislation that a majority agreed needed reform. Trade fell into the category of economic policy deemed to be above the partisan fray.) They welcomed the development of sweeping powers granted to American officials, nonetheless. The Nixon, Ford, and Carter administrations used the Trade Act to negotiate in Tokyo.

The results of the Tokyo Round in terms of trade concessions were sizable, and remarkable given the economic climate. Over the 74 months of talks (nearly double the Kennedy Round duration), the Tokyo Round of multilateral trade negotiations was bookended by two oil crises, followed the collapse of the dollar and the Bretton Woods system, and finished during a deep recession. Nonetheless, the GATT regime adjusted, in this era of duress, to produce over $300 billion in tariff reductions. The 102 nations that participated in the round had even larger ambitions than in the previous GATT talks. The negotiators took their usual stance to reduce tariffs and quotas and to implement and enforce GATT rules and principles, but they then sailed into the uncharted waters of non-tariff barriers on a broader and more numerous scale than ever before. For their part, the Ford and Carter administrations decided to make the Tokyo Round so expansive in terms of adding more issues to the table that, in the words of the chief of the delegation, USTR Robert Strauss, it would 'be so big that no one can stand the failure'. As a consequence, the Americans 'kept loading the table' with suggestions for codes on non-tariff barriers before the Europeans and Japanese realized that such provisions played to US strengths by reducing pernicious obstacles to trade.[22] These included voluntary export restraints and a host of barriers on agricultural products. The contracting parties also finally addressed, in a meaningful way, the interests of developing nations.

In addition to large tariff cuts, negotiators established several codes that transformed the GATT from a tariff reduction body to a trade management forum, and thus anticipated the WTO. These codes related to government procurement, subsidies and dumping, product standards, customs valuation, and import licensing. That is, the GATT had long dealt with tariffs; now non-tariff barriers were fair game. The code on subsidies and countervailing duties addressed national industrial policies by acknowledging that subsidies on manufactures were trade barriers, and not just domestic policies. Countries could impose unilateral countervailing duties if a foreign subsidy created material injury to a home producer. With the agreement of others, such duties could be slapped on a third party. There was an important exception, as agricultural export subsidies were exempt from the code, but there was a pay-off for domestic producers. That is, it was clear that the code meant not a change in flows of trade (due to lessened subsidies) but a promise that implementing legislation could aggressively turn to using countervailing duty laws. Because subsidies were too embedded in politics and domestic business and industrial constituencies to alter significantly, they would emerge as major problems for the GATT in the decades ahead. Indeed, the code highlighted the fact that, considering the myriad of government practices, the very definition of a subsidy was confusing.[23]

Other codes also addressed the politics of trade, and the modified multilateral balancing act between liberalism and protection. Anti-dumping rules were tightened under one code, though not easily. Because the concept of 'injury' was transferred from the subsidies code, private and government practices were jumbled together in ways that made enforcement difficult. State purchasing policies were also recognized as a non-tariff barrier under a code on government procurement. Rules followed to give national and foreign firms equal treatment when bidding on contracts. The number of government agencies so covered was small, but this code paved the way for later expansion by adhering to standards of conditional most-favoured-nation treatment. That meant that non-signatories might not necessarily have access to the government procurement markets of this code's signatories, although the initial list of 12 members covered some two-thirds of world traders who could buy abroad. The customs valuation code took another stab at the American Selling Price that has so bothered competitors to the US chemical industry and that the Kennedy Round had failed to phase out. The result was the conversion of some of these egregious protective devices to tariffs on an *ad valorem* basis, which were then easier to reduce. Surveillance and dispute mechanism rules were set under other non-tariff barrier codes, each of which established a committee of members who could oversee and consult about their implementation but could not, in general, rule on disputes. Thus, improving dispute mechanisms and settlement procedures made limited headway, although the modest steps set a precedent for future action.

The expansion of the GATT's purview, through the non-tariff barrier codes, opened the door to an ITO-type organization, of which the WTO was the result 15 years later. By no means did the codes solve all the problems caused by non-tariff barriers. In large part, their value lay in heading the contracting parties in the direction of solutions that required even more expanded powers and rules by the GATT. The forum also deviated from its hallmark principle of non-discrimination because only signatories of the codes, and not the entire GATT membership, were governed by the new regulations. Thus, most of the Third World nations saw the codes as too restrictive and refused to sign them, even though they were susceptible to discrimination by code signatories under GATT rules. More detailed work on these measures was also needed because some left vague the forms of government intervention that were considered violations of non-tariff barrier rules. The Tokyo Round also did not adequately apply the non-discrimination/most-favoured-nation rule to safeguards, such as the rising number of voluntary export restraints, because of selective, rather than universal, treatment.[24]

In the difficult trials over agriculture, there were few successes because contracting parties could not agree on whether liberalization of trade (the American position) or stable prices and supply (the European Community's goal under the CAP, with Japan's backing) should prevail. This was a fundamental disagreement that spoke to the GATT's ethic of modified multilateralism, but disputes in the farm sector had become seemingly insurmountable obstacles to any progress in trade negotiations. The US Department of Agriculture saw no purpose in the GATT round other than to destroy the CAP, and thus enthusiasm for the Tokyo talks dwindled in this important constituency. It was all the more serious because the developing nations depended on access to the agricultural consumer markets of the advanced countries. Only an agreement to consult on certain commodities was attained in Tokyo because the European Community wanted stabilization of commodity trade. Such a conservative approach was not acceptable to major exporters, including Australia which sought special exceptions to export subsidies. Modest gains in tariff cuts and trade in grains were the order of the day, yet the Tokyo Round also proved to be the last time that agriculture was exempted from multilateral trade negotiations. It was the last gasp of domestic protectionists to expand subsidies and the like. The succeeding Uruguay Round would heed the call to attack such farm-sector protectionism.[25]

At the Tokyo Round, the Third World received a pledge for differential treatment that would exempt them from GATT rules on reciprocity and non-discrimination, and that would make the generalized system of preferences negotiated under UN auspices legal in the GATT regime. Under this plan, as development proceeded, such treatment would gradually be withdrawn and these nations would assume the obligations of regular GATT members. The terms of withdrawal were left vague, however, and many of the Third World nations remained mired in poverty or struggled with other models of growth (export drives or debt) to facilitate development. However, they gained greater access to GATT rule-making itself. For example, the forum had created two deputy director positions, one of which was responsible solely for the developing nations. Yet adhering to principles was another matter entirely. The emerging countries were unable to adjust to the notion that, for the first time, the contracting parties were asking all nations to submit to codes that impinged on sovereignty. Most of the Third World countries were simply not ready to permit such a course because their internal political structures, which were highly protective, prohibited such action. A handful—India, Brazil, Korea, and Argentina—at the last minute embraced the customs valuation code under a special protocol that permitted them to take five years to implement the obligation (rather than do so immediately). That was one of the very few instances of agreement between the advanced and developing world at the Tokyo Round.

In the eyes of the Third World nations, the GATT still failed many of them, and the advanced countries took note. The Americans, for one, noted that with respect to the non-tariff barrier codes, ‘there was very little developing-country participation’. The GATT forged agreements among the rich countries in North America, Europe, and Asia (Japan), and the developing world was not brought into the process until the end. Thus, the United States and other nations believed the Third World got a ‘free ride at the

Tokyo Round', or received benefits without obligations. Meanwhile, most of the developing countries believed that tariff concessions awarded to them were so modest as not to 'justify their participation in some of these non-tariff measure agreements'.[26] The next round of the GATT, at Uruguay (see Chapter 6), Tokyo negotiators pledged, would include a wider array of nations on these important issues, but the Tokyo Round also highlighted the difficulty for the Third World nations of achieving their ends. Coalitions were hard to build, particularly among countries at varying stages of development and with divergent interests according to export and import needs (as Amrita Narlikar and Ernest Preeg explain in Chapter 9 and Chapter 6). In addition, until the Uruguay Round, the GATT had not been an effective tool for the reforms sought by the developing nations: bargaining in the GATT had long focused on industrial goods (in which the Third World was less involved than the advanced countries) and the list of countries participating in negotiations was largely limited to the rich powerhouses. Thus, the GATT continued to be both an engine of growth but an unsatisfactory avenue to prosperity for the poorer and developing countries.

In the end, the Tokyo Round changed the course of the GATT by opening up the forum to more countries, more issues, and more means of solving problems. Concrete accomplishments (such as an agreement to liberalize the civilian aircraft industry) and the various codes were abundant. Indeed, the codes themselves transformed GATT rules, in the words of one expert, 'from statement of broad principle to more detailed regulations relating to domestic and international procedures'.[27] Contracting parties recognized that the GATT needed to change with the times of new demands, constraints, and shifting fortunes of nations, including the leaders in world trade. The GATT had exhausted its usefulness as merely a tariff-reduction forum. Now it would attack the newer, more pernicious non-tariff trade barriers. The American fast-track authority was one example of the needed change. It endured into the next rounds and proved even dramatically helpful by granting authority that provided for a congressional-executive branch partnership to preserve trade agreements.

In fact, the Tokyo Round actually legitimized the GATT itself. For instance, US trade law in 1979, at the conclusion of the negotiations, mentioned it throughout its provisions for the first time in history. Keeping with the rising interest of Congress in trade policy, the 1979 law also gave the President (under section 301) the authority to enforce US rights on a unilateral basis; now, the US could retaliate against what it deemed as unreasonable and discriminatory practices, at the same time that the push for fast-track trade liberalization continued. By the time of the Uruguay Round, in the midst of the Reagan administration, the dual position of liberalization tempered by retaliatory threats and cushioning domestic producers had strengthened. The President also signed bilateral trade pacts (Israel, 1985, and Canada, 1988) that protected certain industries and included items not covered by the GATT, such as trade in services and intellectual property rights, while he pushed for lower trade barriers in general. The Tokyo Round was also a transitional launching pad to the Uruguay Round that established the World Trade Organization. That round dealt with such issues as opening Japanese financial markets and setting accords in the telecommunications sector that would not have been possible without the big step of the Tokyo Round codes.

Transitional, not transformational, best describes the Tokyo Round. There was not enough notice of Japan's new-found economic might, or for Asian power in general. Agricultural problems also went largely unresolved, as did issues affecting the developing world. The dispute settlement code proved to be a mark of progress, but it was not strong enough. Although solutions were imperfect, they were groundbreaking in advancing the forum towards more concrete, workable solutions in future rounds. Multilateralism prevailed. In addition, the commitments made in the Tokyo Round continued into the Uruguay Round, and were accepted under the WTO. Actually, four agreements—in civil aircraft, government procurement, dairy products, and bovine meat—bucked the trend towards multilateralism and remained 'plurilateral', or limited to a narrow group of signatories. The former two gained more adherents as time went on, and the dairy and meat plurilaterals were absorbed into other agreements.[28] In general, most experts agreed that the Tokyo Round served 'as a halfway point to the Uruguay' talks in terms of settling outstanding issues and beginning negotiations on new, more enduring and relevant ones that continued the GATT's progress forward as a vehicle of modified trade liberalization.[29]

5.5 Conclusion

By the end of the Tokyo Round, the General Agreement on Tariffs and Trade had been in existence for over 30 years. During that time, its mandate for multilateral trade liberalism had expanded as the forum adjusted to new pressures and circumstances in global commerce and balanced between the market ethic and protectionism. During the four decades of its existence, the GATT had succeeded in addressing key points of discord in the trading system, such as quantitative barriers, which were thorns in the 1940s but had largely disappeared as problems by the 1960s. By that time as well, the forum had largely neutralized the chronic problem of tariffs that had so terrorized the world since the Great Depression. Thus, GATT's signature achievement was engaging in an 'unprecedented amount of tariff disarmament' by the end of the 1960s.[30]

That the globalization of the 1980s onward rendered the GATT less important, because such key aspects of the world economy as trade in services were not addressed by the forum, showed that its mandate had not grown sufficiently. Failure to stop agricultural protectionism and the emergence of trade agreements outside of the GATT—such as the Multiber Arrangement on textiles—threatened its relevance. Third World nations largely worked outside of its purview, believing that the GATT did not serve their interests because they were not principal suppliers and lacked leverage and the institutional capacity to effect change within the forum.[31] Criticism from classical economists also buffeted the GATT. By granting exceptions and waivers to the non-discrimination rule, the GATT, they argued, had abandoned 'price-oriented' policy and 'bent' to protectionism to preserve 'harmony' among nations. Doing so had slowed trade liberalization and world growth. Their views unrealistically neglected the forum's role in facilitating *political* agreement, as well as economic cooperation, however.[32] Modified multilateralism promoted growth, but also security, alliances, and domestic peace. The GATT had long been placed in service to NATO, foreign policy agendas, and, at least in part, to the whims of national legislatures.

By the 1980s, the forum's historic role simply pointed to the need for extending the GATT system into even more economic arenas than before, and stimulated calls for another round of negotiations to address new and more issues. A legal overhaul was in order: GATT required the formalization of rules and enforcement mechanisms. In short, it needed to move from a forum to a more formal body.[33] The GATT had long served as a flexible instrument to help with the recovery of the world economy after the Second World War. It then helped to adjust the economic system to transformations in power among nations that led to new competitive pressures and patterns. It had carried out these roles successfully. By the time of the Uruguay Round in 1986, the world trade forum itself had transformed into a larger, more complex organization that contracting parties would reform further. Along the way, the GATT emerged as the midwife of a comprehensive global economic organization—the WTO—that had long been the goal of its founders half a century before.

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