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Securing Access to International Markets

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Much of the action in international trade negotiations is bilateral or otherwise discriminatory, including action under GATT auspices. Does this threaten multilateralism and market access for small trading companies?

The unconditional extension of the fruits of trade negotiations under the General Agreement on Tariffs and Trade is giving way to bilateral and other discriminatory trade agreements. Led by the United States, GATT has taken a strong position against discrimination: the benefits of negotiations under GATT generally have been extended to all contracting parties without specific conditions or reservations. This unconditional extension of benefits — the unconditional most-favored-nation principle (MFN) — is now under considerable pressure.

Supporters of conditional MFN point out that it ensures reciprocity and, by discouraging foot-dragging and free-riding, encourages negotiation. On the other hand, advocates of unconditional MFN argue that it ensures that the benefits of negotiations are not wasted, that it simplifies administration of trade barriers, reduces friction between nations, protects the small and weak, and facilitates the development and preservation of a multilateral trading system.

Although the United States has pursued nondiscriminatory trade pacts since 1923, Washington has in a recent turnaround pursued

preferential trading arrangements, promoted forms of conditional MFN, and sought discriminatory treatment for some of its exports and imports. No nondiscriminatory leadership has emerged to replace that of the United States.

The threat to multilateralism and small traders will be reduced if:

- New trade-liberalizing “clubs” that are formed in the Uruguay Round, or elsewhere, are open to new members on the same terms that apply to the founders.
- Compliance with the rules of such clubs is determined multilaterally and not unilaterally by any existing members.
- Markets that are levered open are opened in a nondiscriminatory manner.
- Preferential trading arrangements conform to the relevant GATT rule — Article XXIV.
- The main safeguard provision of GATT (Article XIX) remains nondiscriminatory.

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by
Richard H. Snape

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I. Foot-shooting and Slammed Doors

Just as trade has two sides to it, so does the inability to trade. Mutually beneficial trading may fail to occur because opportunities are missed by the seller, or by the buyer. Thus it is with nations as for individuals. For all the damage done to nations by the closure of markets abroad, much more is probably self inflicted by inappropriate trading policies at home. Nevertheless damage is done by the closure of markets abroad, even to those countries nimble enough to find their way through or around many barriers. Nowhere perhaps is this more true than for agricultural countries where although alternative crops and other opportunities may exist, the gains from specialization according to climatic or other advantage are particularly great.

It is difficult to believe that the exports of Japan, the Republic of Korea, Singapore, Hong Kong and Taiwan have been seriously restrained by import barriers, and their ability to avoid them has been remarkable. In part they have been helped by the form of many of the barriers, in that negotiated

export restraints have enabled them to raise their export prices, unlike the most common forms of barriers to agricultural trade, for example, and have discouraged new entrants. Restraints have been accepted by exporters as an alternative to harsher forms of trade restriction. Some countries even appear to have been able to increase their export earnings as a consequence of the restraints, at least in the short run (Tarr, 1987), but there is little doubt that these restrictions have been costly to exporters as a whole, and particularly to developing country exporters, even when ways to circumvent them have been discovered.

Has world trade become more or less liberal over the last thirty or forty years? Over most of that period, international trade has grown much faster than world production: between 1950 and 1975 the merchandise trade (excluding oil) of industrial countries grew almost twice as fast as their gross domestic product (Bergsten and Cline, 1983, p.59). This in itself could suggest that the predominant thrust of trade policy has been liberal, or at least that policies have not blocked tendencies toward international specialization. Recent history is more or less in line with these broad trends, though both output and trade have grown slower over the last dozen or so years. From 1980 to 1986 growth of world manufacturing output averaged 2 1/2% per annum, with manufacturing exports at 4 1/2%, though agricultural exports at 1% per annum grew at less than half the rate of agricultural output. (GATT, 1987, Table I.1)

Turning to the measurement of trade barriers, it is very difficult to determine whether these have been increasing or decreasing. Certainly tariffs

on imports of manufactured products imposed by the major industrial countries have decreased over the postwar period. When the tariff reductions agreed in the Tokyo Round of multilateral trade negotiations are fully implemented, the average of these tariffs will be well under 10% in both nominal and effective terms. But such a calculation ignores tariffs and non tariff barriers (NTBs) on agricultural products (reflected in the slow growth of agricultural trade relative to output), other non tariff barriers, and export-promoting subsidies, as well as all the trade barriers of developing and centrally-planned countries. A careful study supports the general perception that non-tariff barriers are proliferating (Nogues, Olechowski and Winters, 1986). Concentrating on sixteen industrial countries, the authors conclude that at least 27% of the countries' imports, "some \$230 billion of 1981 imports, would have been covered by one or more of the selected NTBs as they applied in 1983" (p. 197). They identified about 2,500 (net) additional NTBs imposed between 1981 and 1983, these being quite separate from the tightening and reinforcement of pre-existing barriers.

So while tariffs have been falling in much of the world, other trade barriers have been rising. And the change has been associated with changes in the trading system. Gradually there has been a swing from a system based on general trading rules, applicable to most products and countries, to one based on product- and country-specific trade management, a change from non-discrimination to discrimination. This trade management and discrimination has arisen from three sources: in responding to new and highly competitive sources of supply; in the development of preferential trading relations; and in attempts to lever open markets that have been closed or regulated by

government decree. There are both trade expanding and contracting forces at work here, as well as trade diverting. Of particular concern is that when all traders are not treated equally, it is the small and the new entrants that are likely to be prejudiced.

II. Opening Doors

In seeking to open the trading doors, a key question is whether this is now best done on a bilateral basis, plurilaterally (where this implies among a restricted number of countries), or fully multilaterally. There are really two steps in this question: (i) what is the best grouping among which to conduct negotiations, and (ii) whether, and on what terms, to offer the results of the negotiations to other parties.

Reciprocity

Reciprocity is at the core of trade negotiations. As reciprocity is extremely difficult to handle in a many country, many product framework, it tends to lead to country-by-country or product-by-product negotiations, whether or not the fruits of the negotiations are then extended more widely. A major accomplishment of the General Agreement on Tariffs and Trade has been to provide a framework for reciprocity to be negotiated across a very wide group of commodities and countries. General trading rules are specified in the GATT (for example the proscription of trade barriers other than import tariffs and of preferential trading arrangements, except in specified

circumstances) and while bargaining on tariffs for particular groups of products has often been between the principal suppliers of them, the fruits of these bargains have then been extended to all other members of the GATT without any specific conditions. Trading rules of general application and the unconditional extension of benefits -- the unconditional most-favoured-nation (MFN) principle that is embodied in Article I of the GATT -- are the essence of the GATT system, but they are now under considerable pressure. Have general trading rules and the unconditional MFN approach reached the end of their useful life? Will a more restrictive development of rules and extension of negotiated benefits now be more productive in reducing and restraining trade barriers? And what happens to all the existing multilateral and non-discriminatory trade agreements if the emphasis is now to be on bilateral or "minilateral" reciprocity? What happens to those who have little with which to bargain?

Of course, governments enter trade negotiations not only in order to reduce the trading barriers of other countries. The process of negotiation and the outcome can be of considerable domestic benefit. The process of negotiations can enable governments to look at the general interest of their own country rather than simply respond to the pressures of sectional interests. This is an aspect of what is often referred to as the bicycle theory of trade negotiations. The negotiations themselves provide a general-interest momentum to resist sectional pressures, and the commitments entered into can be a useful bulwark in resisting these pressures when the negotiations are over. So in considering the appropriate forum and country groupings for conducting negotiations and for entering into commitments, one

needs to bear in mind domestic as well as foreign implications. But it is the international dimension that is the focus of attention here.

Forms of Discrimination

If nothing is being obtained in return, it will almost invariably be in a country's economic interest to be non-discriminatory in its trade; favouring one supplier over others will mean that the country is paying more than it need for at least some of its imports, if not all. Thus preferential access will only be warranted if something is obtained in return, and the gains need to be weighed against the costs. Diverting the sourcing of imports to more expensive suppliers is the most obvious cost. But not all the costs may be immediately apparent: some may be of a systemic nature that take time to unfold. Any discrimination in favour of a country is discrimination against others, and each act of discrimination encourages a discriminatory system that will discriminate against as well as for any particular country. The net effect could be the closing, not opening, of markets for a country's exporters.

The unilateral granting of trading preferences from developed to developing countries under the Lome and GSP arrangements are the leading examples of discriminatory quids apparently being granted without reciprocal quos. While there is little doubt that these preferences have been of some benefit to the recipients, their effects have been somewhat disappointing. Often they have been severely circumscribed in their coverage. (Laird and Sapir, 1987). But apart from this, there is little doubt that this unilateral

and preferential granting of access has pretty well run its course. Countries may of course take the view that the lifting of trade barriers is in their own best interests. But to the extent that barrier reduction requires negotiation or that negotiations are required to prevent barriers from being raised, the question of the appropriate structure of negotiations remains, as does the question of with whom the fruits of these negotiations should be shared.

Discrimination can take many forms: broad bilateral and plurilateral preferential agreements, with varying degrees of openness to new members, industry specific arrangements that allocate access quantitatively, and the granting of most-favoured-nation (MFN) treatment conditionally. Industry or sector specific negotiations almost invariably discriminate against the cheapest, more efficient sources. This has led many to argue that non-discrimination is the sine qua non of real trade liberalization (e.g. Tumlin, 1985); others argue that discrimination is often the lesser of two evils, being the only way in which some markets can be opened at all.

Conditional and Unconditional MFN

The debate between conditional and unconditional MFN is an old one and one which underlies a great deal of current disputation regarding discrimination. Under conditional MFN the concessions given by Austria to Burma, for example, in response to concessions given by Burma to Austria, would be extended to China, say, only if China granted to Austria concessions that are judged to be equivalent to those given by Burma. Under unconditional MFN on the other hand the concessions negotiated between Austria and Burma

would be extended unconditionally to all other countries. The GATT provides for unconditional MFN among all members of the GATT. Non-members may receive the benefits also, but they have no assurance of receiving them, nor that, having received them, they will not be removed.

It is often argued that conditional MFN ensures reciprocity, encourages negotiation, and that negotiation coin is not wasted. The argument is that unconditional MFN tends to inhibit trade negotiation by encouraging foot dragging and free riding -- countries will hang back from negotiations hoping to get the benefits from the reductions in barriers negotiated by others. Again, it is often argued that unconditional MFN is not fair: it may be regarded as unfair to Austria for China to get "free" from Burma the concessions that Austria bought, by means of its own concessions, from Burma. And if the United States has incurred considerable economic and political costs in levering open the Japanese beef or the Korean insurance market should it not insist that it alone receives the benefits of this increased access? It can also be argued that unconditional MFN will distort trade in that, in an attempt to restrict free riding, tariff categories will be constructed so as limit the benefits to the finely specified commodities produced by the countries that are negotiating with each other.

Against these points it can be argued that unconditional MFN ensures that the benefits of negotiations are not eroded. A subsequent conditional MFN bargain between Burma and China in the above example, could easily cancel the benefits that Austria had "bought" from Burma -- Austria would then have paid a price for nothing. A system of unconditional MFN ensures that each

participant knows where it stands and that any subsequent deal will not erode the negotiated benefits; indeed if Burma subsequently negotiates mutual concessions with China, not only will Austria have the benefits of its concessions from Burma preserved, but it will get benefit from any concessions that Burma and China exchange. Furthermore, it is argued, a world of conditional MFN arrangements will be one in which it is very costly to administer trade controls, with each country having country-specific tariff schedules, and with the attendant rules of origin and determination of origin. Disputes about what is or is not an equivalent concession will be endemic and often bitter. The free riding point may have more substance, and the product specification twist can be used to discourage it.

A further and major argument for non-discrimination arises in the protection of small trading countries. Enforcement of international agreements is always particularly difficult; transgression of rules or exception from them is more unlikely when the transgression must be against, or the exception given to, all parties to the agreement, and not just one. This is one of the most important protections of the small trading nations in the GATT, as is evidenced by repeated efforts to circumvent it and to modify its application where it is of particular importance: in particular in relation to Article XIX, the main safeguard provision of the GATT.

Unconditional MFN was the general European practice during the nineteenth century and until the early 1930s; from 1776 until 1923 the United States adopted conditional MFN. At least one distinguished scholar had no doubt about which was superior:

The most-favored-nation clause in American commercial treaties, as conditionally interpreted and applied by the United States, has probably been the cause in the last century of more diplomatic controversy, more variations in construction, more international ill-feeling, more conflict between international obligations and municipal law and between judicial interpretation and executive practice, more confusion and uncertainty of operation, than have developed under all the unconditional most-favored-nation pledges of all other countries combined. (Viner, 1924)

Nevertheless, it is a fact of life that if countries with high barriers continue to draw benefits from greater access to other markets without lowering the barriers to their own, they will strain the continued application of unconditional MFN, inviting conditional MFN and discrimination against themselves.

What then is the more effective system to reduce trade barriers? A non-discriminatory trade policy does not of itself ensure liberal trade though it can be argued that it is necessary for an enduring liberal trading regime. Indeed the experience of the United States in the decade after it adopted unconditional MFN in 1923 was so bad in this regard (with the Smoot-Hawley tariff in particular) that it led one of its main proponents (the economist F.W. Taussig) to rue its introduction (Diebold, 1988, pp.5-6). Ironically he took this rather depressed view on the eve of a greater flowering of his earlier vision than he might have imagined: a series of bilaterally negotiated but non-discriminating tariff reductions by the United States and with it the inauguration of half a century of unconditional MFN, and unprecedented, tariff reductions by that country. These agreements marked the commencement of U.S. leadership in the development

of a non-discriminatory world trading system, a leadership that in some ways it now appears to be abandoning.

The GATT system of unconditional MFN among the contracting parties to GATT has been particularly effective in obtaining and preserving reduced barriers to imports of most industrial products by the developed countries. Nearly all countries have obtained increased access to these markets because of the required extension of the benefits of these reduced barriers to all GATT members and the de facto extension to most other countries. But many argue that the relatively easy barriers have now been reduced. This success has been bought by the extraction of sensitive products from the coverage of GATT, by evasion of GATT, and by soft interpretation of GATT's non-discrimination provisions. It is argued by some that the more difficult problems can only be dealt with by departing from general rules and non-discrimination, at least on a transitional basis. Before returning to this question some of these compromises of the basic principles of GATT are briefly considered.

Agriculture

Agriculture was a problem right from the start of GATT. Special provisions were written into the original General Agreement on Agriculture to cope with problems associated with U.S. farm support; these were then explicitly ignored by the U.S. Congress, and a waiver was granted by the contracting parties to legitimize what the U.S. was doing. Other countries applied for and received waivers from their GATT obligations with respect to

agriculture, and thus most of agriculture was effectively removed from GATT coverage.

Clothing and Textiles

Clothing and textiles emerged as a developing country "problem" as Japan and then other countries started on the path of industrialization. They were just too competitive. Starting with a short-term cotton textiles arrangement in 1961, "progress" was made to a long-term arrangement in 1962 and then to the first Multifibre Arrangement (MFA) in 1973, extending the coverage to man-made fibre and wool products, as well as cotton, and subsequently to MFA II, III and now IV. Despite all the clever ways in which many producers have found means to dodge around the restrictions, and the existence of many unfilled quotas, the essence of these arrangements is the restraint of exports by the developing countries to the developed. The relevant products are effectively removed from coverage by the general provisions of the GATT as they apply to other products. The trade between the parties to the MFAs is thereby managed in an inherently discriminatory manner. Is trade more liberal with this discrimination than without it? The counter-factual cannot be known, but for what was intended to be a transient restrictive and discriminatory arrangement to facilitate the commencement of the Kennedy Round, the arrangements have been remarkably durable and luxuriant (cancerous?) in their growth.

Other Voluntary Export Restraints

The pattern set by clothing and textiles has been followed by other commodities, many of them of particular interest to developing countries, though as yet the other voluntary export restraints and organized marketing arrangements have not been graced with the blessing of an "Arrangement" endorsed by the Contracting Parties to GATT. Motor vehicles, electronic products, footwear, steel, are among those that have been so controlled, often by government or industry arrangements that are not open to outside scrutiny. Again, these industry-specific arrangements are inherently discriminatory between countries and, with the exception of footwear, show little sign of abating.

Contingent Protection

Use of the antidumping and countervailing duty provisions of the GATT have developed well beyond what was apparently envisaged by the architects of GATT, and have become an additional arm of protection. The Codes negotiated in the Tokyo Round of multilateral trade negotiations appear to have exacerbated the use of these procedures to harass exporters. While the intention is to discriminate against "unfair" trading practices, there is much evidence to suggest that the procedures are used frequently to discriminate against cheap imports whatever the cause of the cheapness. "New" sources are major targets. Until now, the non-discriminatory feature of the "fair-trade" safeguard provisions of Article XIX has been preserved, but the wolves are at the door.

Preferential Arrangements

(i) Customs Unions and Free Trade Areas. The provisions of Article XXIV for the formation of customs unions and free trade areas are among the most abused of the GATT: very few if any actual free trade agreements and customs unions appear to meet the strict provisions of this article, while the "Enabling Clause," passed as part of the Tokyo Round agreements, permits developing countries to grant each other preferences with little or no inhibition.

(ii) Other Preferences. Preferences for developing countries are the main other way in which the strong position of the original GATT against preferential arrangements, other than customs unions and free trade areas, has been breached. Again the Enabling Clause has cleared the way for further such preferences, should the will be there to grant them, in regard to non-tariff as well as tariff barriers.

III. Towards Ubiquitous Discrimination?

During negotiations for the formation of the GATT the United States expressed unreserved antipathy towards trade preferences which fell short of thorough-going customs unions and free trade areas. Apart from its encouragement of European integration and its lack of insistence that trade agreements arising from that complied fully with GATT's Article XXIV, this opposition continued for three decades, with the United States holding out for

a long time against generalized preferences for developing countries. More recently it has departed from this position, both in its pursuit of preferential trading arrangements for itself and in its espousal of conditional MFN in tackling new and/or difficult trade liberalization problems. Forty years ago, the United States was concerned to limit discrimination against its exports. This position has now given way to the seeking of discriminatory favourable treatment, pressure for restraints on certain exports to the United States, and actual and threatened discriminatory actions against foreigners who are perceived to be adopting "unfair trade" practices with respect to exports to or from the United States. Much of the recent pressure for trade discrimination is a political response to the country's trade deficit, though the trend predates the deficit. It is not that the United States is behaving differently from many other countries. But with the shift in the American position, the nature of the leadership being given in the world economy has also changed: no non-discriminatory leadership appears to have emerged to replace that of the United States.

The change of direction of the United States is reflected in words as well as deeds. The Administration's statement on trade policy on 23 September, 1985 included:

While our highest priority remains the improvement of the world trading system through a new round of multilateral trade negotiations, the United States is interested in the possibility of achieving further liberalization of trade and investment through the negotiation of bilateral free-trade arrangements such as the one recently concluded with Israel. We believe that, at times, such agreements could complement our multilateral efforts and facilitate a higher degree of

liberalization, mutually beneficial to both parties, than would be possible within the multilateral context."

More recently, the Secretary of Treasury said:

[Our] approach is idealistic in aim, but realistic and often incremental in method. It seeks to move nations toward a more open trading system through a strategy of consistent, complementary, and reinforcing actions on various international fronts, bilateral and multilateral. ...[The Trade Agreement with Canada] is ... a lever to achieve more open trade. Other nations are forced to recognize that we will devise ways to expand trade -- with or without them. If they choose not to open their markets, they will not reap the benefits. ... While we normally associate a liberal trading system with multilateralism -- bilateral or unilateral regimes may also help move the world toward a more open system." (Remarks by the Secretary of U.S. Treasury, James A. Baker, III, before the Canadian Importers and Exporters Associations, Toronto, Canada, June 22, 1988.)

The latter part of the statement could hardly be a more explicit endorsement of discrimination, including conditional MFN. One wonders whether sufficient consideration has been given to the effects of this change in leadership on the trading system as a whole, and whether it is indeed possible to preserve or achieve a multilateral system by means of discriminatory weapons. The United States appears to be joining much of Europe and the Group of 77 in turning its back -- or at least half of it -- on non-discrimination.

GATT Codes

Bilateral trade agreements and the targeted (and often discriminatory) leveraging open of markets are relatively new United States trading policies, at least on the scale and with the explicit advocacy that

has been apparent recently. These developments were perhaps foreshadowed by the GATT Codes and more particularly by the conditional MFN or "restricted club" interpretation of some of them, and of the Subsidies Code in particular. What has not been settled legally, though probably it has been de facto despite very weak legal support, is whether a Contracting Party to the GATT, having itself accepted the provisions of a GATT Code, is required under Article I of the GATT to extend the benefits of the Code to all members of GATT, or whether it can restrict these benefits only to those countries that have also accepted the provisions of the Code. The United States has adopted a conditional MFN interpretation of three of the Codes: Subsidies and Countervailing, Government Procurement, and Technical Barriers (or Standards). The insistence by the United States on applying these Codes on its own terms, without testing under GATT procedures the compliance of its interpretation with Article I of the GATT, and the apparent determination of the United States and other governments to pursue further agreements in a GATT context on a conditional MFN basis, provides another significant threat to a non-discriminatory trading system.

It can be argued that the United States and other countries taking this conditional MFN approach to Codes (including possible Codes in the area of services) are simply extending into the non tariff barrier arena the bilateral negotiations and attempts to contain free riding that have always been a part of multilateral trade negotiations. This point has some substance but while the principals in the successive rounds of GATT negotiations have attempted to contain short-run free riding, there has been little restriction of free riding in the longer term: access to benefits already negotiated has

been relatively easy for most countries, whether they were new members of GATT or new exporters of the relevant products. This is not the case with the three Codes mentioned above; conditionality continues with no unconditional multilateralization. The crux of the question of discrimination here is how easy it is to join the club, who determines the rules of entry, and who interprets them. Already, considerable ill-will has been generated on this matter by the United States appearing to apply, or attempt to apply, different standards for different countries -- Pakistan and India in particular.

Article XIX

Pressure to have Article XIX qualified or amended so as to allow selectivity was resisted in the Tokyo Round, but it has returned. Selectivity is a key point in the whole question of discrimination and, arguably, through that on secure markets access. While time-binding of safeguard protection is offered as compensation for selectivity, the almost thirty years of restriction and extension of coverage of what started as a short term cotton textiles arrangement issues a warning regarding the trading of birds in the hand for (future) birds in the bush.

IV. Conclusion

Nearly all the action on the international trade negotiations stage thus appears to be in discriminatory and conditional MFN forms, including the action on GATT's own stage. Does this threaten multilateralism, and thereby

threaten market access for small traders? I fear that it does unless (i) any "clubs" of like minded countries formed to restrain on a reciprocal basis particular non-tariff measures are open to new members on the same terms as those agreed for the founder members, and that compliance with these terms is determined corporately by existing members and not unilaterally by any one of them; (ii) any markets levered open (such as Korean insurance and Japanese beef and oranges) be opened in as non-discriminatory manner as the remaining restrictions will permit; and (iii) preferential trade arrangements should fully meet the requirements of GATT's Article XXIV -- that is they should be fully-fledged customs unions or free trade areas and should not raise barriers against other countries.

These conditions may appear to be somewhat utopian, and are certainly not in the spirit of the main trading initiatives of many of the smaller, as well as the larger, trading nations of the world. It is the smaller traders of the world that will continue to be discriminated against on balance by discriminatory trade, so it may be time for them to take the lead against it. But to do so they would have to commit themselves to support the general application of trading rules and to constrain their own trading policies in a way that many have been loathe to do in the past. One can listen again to Keynes' address to the House of Lords in 1945 in relation to the U.K. joining the post-war international economic institutions (Keynes, 1979, pp.623-4):

They [the policies] aim, above all, at the restoration of multilateral trade. ... The bias of the policies before you is against bilateral barter and every kind of discriminatory practice. The separate economic blocs and all the friction and loss of friendship they must

bring with them are expedients to which one may be driven in a hostile world, where trade has ceased over wide areas to be co-operative and peaceful and where are forgotten the healthy rules of mutual advantage and equal treatment. But it is surely crazy to prefer that.

Endnotes

1. A fuller expression of many of the points in this paper is to be found in Snape (1986) and (1988).

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