on GATT panels. Now this is quite interesting because Bob Hudec and Elaine Feldman have argued that increased expertise is needed, but they were both speaking of increased legal expertise. The kind of expertise that the constituents want is expertise of a very different sort; hopefully, it could be made compatible with the kind of legal expertise that Hudec and Feldman are speaking about.

The second point is that in speaking with business people one can quickly see that GATT panels have a two-stage political process internally within a country. The first stage is the prejudgment stage when a practice of a government might be challenged and the responding government works hand in glove with the representative industry to try and defend that practice. So one sees a commonality of interest between government and industry. But then in the post-judgment stage, particularly if the judgement goes against the country, one sees differing interests develop between the industry involved and the government when the government has the obligation of implementing an adverse decision.

When things get to the implementation of an adverse decision, regrettably politics and not law is the principal issue, and relations between governments and affected interests are often difficult. The best way for the legal process to minimize political difficulties is to ensure that legal decisions are both sound and reasonably pragmatic. The latter point is what gives GATT law its special character.

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3

Transparency, Surveillance and the GATT System

*Gary R. Banks**

The ambitious agenda of the Uruguay Round – covering fifteen different negotiating areas – can be interpreted either as evidence of the success of the General Agreement on Tariffs and Trade (GATT) or of its failure. The first interpretation is based on the implied extension of GATT norms and disciplines to important new areas, such as traded services and intellectual property, going well beyond what had originally been envisaged. The alternative interpretation is based on the fact that the negotiating agenda has also been swelled by an accumulation of problem areas from the GATT's traditional domain, inherited as unfinished business from previous negotiating rounds.

The problem areas include the two most highly protected sectors in world trade – agriculture and textiles – and the vexed cross-sectoral issues of voluntary export restraints, subsidies and non-tariff measures generally. Over the past forty years, GATT negotiations have successfully brought industrial countries' tariffs down to negligible average levels. But, since the Kennedy

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Round, the rise of non-tariff barriers (the new protectionism) has been eroding these gains to the point where it must be questioned whether any real progress has been made.[1]

The "new" protectionist measures have a number of characteristics which make them very difficult to control:

- unlike tariffs, the interventions are often hard to identify and to measure;
- they can involve substantial discretion by national administrations;
- some have GATT cover;
- some are illegal under the GATT and, therefore, in GATT terms, are not legitimate negotiating coin;
- others arise out of bilateral negotiations, outside normal multilateral processes; and
- some are felt to be out of bounds to the GATT altogether, involving sensitive questions of domestic policy.

Most important, in providing protection in these ways, governments have been demonstrating their inability to adhere to GATT commitments – commitments which they nevertheless accept as being in their countries' best interests.

Recognizing the threat which this trend poses for the maintenance of an open, multilateral trading system, one of the negotiating groups in the Uruguay Round has considered means of bringing these measures into the light as a precondition for dealing with them. Two approaches proposed by international study groups have provided the basis for the GATT deliberations. One, based on recommendations by Fritz Leutwiler and others,[2] was to institute international surveillance procedures within the GATT. The other, derived from the report of a panel headed by GATT's previous Director General, Olivier Long, was to establish institutional arrangements to promote

1 See, for example, S. Laird and A. Yeats, *Trends in Non-Tariff Barriers of Developed Countries, 1966-86* (Washington: World Bank, 1988) and A. Stoeckel, D. Pearce and G. Banks, *Western Trade Blocs: Game, Set or Match for the World Economy?* (Canberra: Centre for International Economics, 1990). The former found that the share of the major developed countries' trade "affected" by non-tariff measures had risen to 48 per cent in 1986, nearly double its level of twenty years before. On the nature of the "new protectionism" generally, see Brian Hindley and Eric Nicolaides, *Taking the New Protectionism Seriously*, Thames Essay No. 34 (London: Trade Policy Research Centre, 1983) and Jan Tumlir, *Protectionism: Trade Policy in Democratic Societies* (Washington, D.C.: American Enterprise Institute, 1985).

2 Fritz Leutwiler et al., *Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT Secretariat, 1985). (The "Leutwiler Report").

transparency at the national level.[3] The first approach has already been implemented; the second remains under consideration.

This paper looks at these approaches to improving the GATT system and what they could achieve. It begins with a diagnosis of why protectionism has been outpacing the GATT, as a basis for evaluating the two initiatives. It concludes that the domestic origins of international trade problems ultimately require changes in domestic procedures, as recommended by the Long Report, and considers the scope for achieving this in the Uruguay Round.

The Domestic Forces Behind Protectionism

That the GATT has experienced difficulty in resisting the new protectionist tendencies of member countries is not surprising when one contemplates the biased nature of domestic policy-making environments. That bias occurs on both the demand and supply sides of what has come to be called the "political market for protection" – and it has been getting worse throughout the post-war period in most industrial countries.

Biased demand

First, on the demand side, there is the long-recognised imbalance in the demands on government to redistribute income from large to small groups within society. This phenomenon has been rigorously analysed in the modern political economy literature, but it is really just a matter of common sense. In each particular decision on protection, the potential gainers individually have much at stake, while the potential losers individually have little – even though the aggregate redistribution of income and the cumulative cost to the economy may be very large. As a result, adjustment-averting producers are able to overcome free-rider obstacles to effective collective action, but consumers and tax-payers are not.[4]

The information aspect of the asymmetry in incentives facing potential winners and losers from protection has been described by Roessler:

3 Olivier Long et al., *Public Scrutiny of Protection: Domestic Policy Transparency and Trade Liberalization*, Special Report No. 7 (London: Gower for the Trade Policy Research Centre, 1989). (The "Long Report").

4 This has been known to economists since at least Vilfredo Pareto, who provides a very nice illustration in his *Cours d'Economie Politique*, in *Oeuvres Completes*, Tome 1 (Genève: Librairie Droz, 1964). Modern theorists who have provided a more formal treatment include Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957) and Mancur Olson, Jr, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965).

> Anyone wishing to influence policy needs a substantial amount of information to know which specific policy favours him, to produce arguments and to counter any attacks on him. Information, however, is not free. Consequently it is rational to influence policy only if the potential returns are high enough to justify the corresponding investment in information. Most people earn their income in one area, but spend it in many. Hence the area of earning is much more vital to them than any one area of spending. People are more likely, therefore, to invest in information to exert political influence in their role as income receivers than in their role as income spenders because it is in their role as income receivers that investments in information yield a greater return. As a consequence, producers rather than consumers tend to influence the formation of trade policies.[5]

The informational obstacles to a more balanced domestic debate are compounded by the inherent sympathy of the general populace for the protectionist arguments of industry. This has several sources:

- one is the nationalism, if not xenophobia, that is latent in most societies, and which can be manipulated against the trade of foreigners – especially where "their" goods are produced under quite different labour and social conditions to "ours";
- another is that people simply do not like to see others lose their jobs – "for we might be next" – and are likely to support policies which are seen as necessary to protect jobs, even at some cost to themselves (this is behind Corden's conservative welfare function[6]);
- a third, which could be said to underpin the others, is popular belief in the "free lunch"; it is easy for people to see the gains from protectionist policies, but much harder to appreciate the costs;
- these lead to a fourth, reinforcing, effect, which is the tendency of the popular press to dwell on the visible losses from import competition instead of the general benefits ("Japanese imports threaten 1000 jobs in widget industry!").

It follows that governments will normally be under more pressure to grant protection to producer groups than to withhold or remove it. This is a fact of political life. Its origins are essentially informational – in the ignorance, misconceptions and (rational) passivity of the general populace and in the opposite qualities of the vested interests.

5 Frieder Roessler, "The Scope, Limits and Function of the GATT Legal System," *The World Economy*, Vol. 8 (Sept. 1985), p. 296.

6 W. M. Corden, *Trade Policy and Economic Welfare* (Oxford: Oxford University Press, 1974), pp. 107-112.

Biased Supply

It is not generally appreciated that in most countries this imbalance in the demand for protection is compounded by legal and administrative (institutional) arrangements which actually favour the claims of sectional interests; in other words, that there is also a systematic bias on the supply side of the protection market.

When an industry has a problem competing with imports it has a number of avenues open to it. First, it can appeal for protection under whatever laws or regulations seem most appropriate such as emergency protection or unfair trade laws. These legal and regulatory arrangements will have been established in the first place largely in response to industry lobbying. Typically, they have criteria which focus on the needs of industry, rather than the economy as a whole, and contain considerable scope for administrative discretion. From their narrow perspective it is usually not too difficult for a truly uncompetitive industry to establish a case for import relief.

If an industry fails to get assistance under the established arrangements, it can lobby political representatives and/or the administration to find an alternative, often informal, solution. (In large trading countries, voluntary export restraints have proven ideal). Failing that, it can push for changes in the rules and procedures themselves.

The main source of information available to the legislature and the executive in responding to industries' claims, apart from the industries themselves, is the bureaucracy. In most countries the bureaucracy is divided into several departments, containing numerous branches, established by government to provide a communication link with interest groups. It is well documented that in these departments a symbiotic relationship naturally develops with their "client" groups – their existence being to some extent mutually interdependent.[7] But even apart from any clientelism, such departments will tend to be an inadequate source of information. This is because they are too specialized, their focus too narrow, to be capable of evaluating the broader economic consequences of industry assistance measures.

7 See Olivier Long et al., *Public Scrutiny of Protection: Domestic Policy Transparency and Trade Liberalization*, Special Report No. 7 (London: Gower for the Trade Policy Research Centre, 1989) and sources cited therein. See also George P. Shultz and Kenneth W. Dam, *Economic Policy Beyond the Headlines* (New York: W.W. Norton & Co., 1977).

Loaded Outcomes

The combination of these two, mutually reinforcing phenomena, places governments in a position where they are being urged to make decisions about protecting industries (a) on the basis of partial and sometimes distorted information, and (b) in a political environment in which the majority of the electorate is passive about the issues (or supportive of industries' claims). This need not mean that vested interests will always get their way. What it undoubtedly does mean is that the dice are loaded in the protection seekers' favour.

The Domestic Policy Functions of the GATT System

The GATT – an international institution – was created with these national political and institutional pressures very much in mind. The unhappy trade policy experience of the 1930s and 40s convinced governments that international commitments which constrained each country's freedom to "beggar its neighbours" could also prevent governments from beggaring their own populations. They also believed that an explicit international legal agreement would strengthen them in their dealings with domestic pressure groups, disciplining their trade policy in the national interest.

Tumlir has described the constraints on government action embodied in the GATT as a "second line of national constitutional entrenchment,"[8] and this aspect has been receiving new attention by GATT legal scholars.[9] In the evocative simile provided by Roessler, the GATT was intended to serve, as in Circe's advice to Ulysses, "as a mast against which governments can tie their hands so as to escape the siren-like pressure groups."[10]

There are two sides to GATT's role in this respect. The first is a set of rules designed to ensure stable, liberal (though not necessarily free) conditions of access to world markets. The most important of these rules are the MFN

8 Jan Tumlir, "International Order and the Decline of Multilateralism," an address to the Australian Economics Society, Canberra, March 1983.

9 For a brief survey, see Heinz Hauser, ed., *Protectionism and Structural Adjustment* (Grusch, Switzerland: Verlag Ruegger, 1986). See also Ernst-Ulrich Petersmann, "On the 'Domestic Policy Functions' of International Trade Rules," in Heinz Hauser, ed., *Protectionism and Structural Adjustment;* Frieder Roessler, "The Scope, Limits and Function of the GATT Legal System," *The World Economy,* Vol. 8 (Sept. 1985), p. 287; and Frieder Roessler, "The Constitutional Function of International Economic Law," in Heinz Hauser, ed., *Protectionism and Structural Adjustment.*

10 Frieder Roessler, "The Scope, Limits and Function of the GATT Legal System," *The World Economy,* Vol. 8 (Sept. 1985), p. 287.

(non-discrimination) rule and the requirement that tariffs be the only form of import protection.

The second side of the domestic policy function of GATT is a negotiating process for trade liberalization designed to create countervailing political forces within and among nations. That process is "reciprocity" and, like so much of the GATT, first found expression in US trade law – in this case the *Trade Agreements Act* of 1934,[11] brain-child of Cordell Hull. Reciprocity is intended to influence the domestic debate in three ways: first, by harnessing the interest of exporters in gaining access to foreign markets, to support domestic liberalization, which is the quid pro quo; second, by also pitting foreign producers interested in export expansion against domestic protectionist interests; thirdly, by reducing transitory adjustment losses from liberalization – as export activities get a demand-induced boost, absorbing resources from the contraction of import-competing industries.

Flaws in the Logic

Given the well known rise in protection with which the GATT is now attempting to grapple, the domestic policy constraints and incentives of the GATT system have clearly been less than effective. The reasons for that can be conveniently discussed under the two main features of the system.

Rule of GATT Law

First, as Dam[12] and others have emphasised, the General Agreement as law suffers from the deficiency that it lacks an authoritative body to interpret and administer it – a role that had originally been foreseen for the still-born International Trade Organization (ITO), of which the GATT was only the commercial policy chapter.[13] Like all international law, the General Agreement ultimately relies for enforcement on its status in domestic law – and, behind that, its acceptance within the signatory nations themselves.

While in principle being an international treaty, the General Agreement and its interpretative Codes are not self-executing in most Contracting Parties (this includes the United States, Canada and Australia). That means that the rules can only achieve national legal force – giving rights to citizens –

11 *Trade Agreements Act of 1934,* Public Law No. 316, 48 Stat. 943 (1934), amending *Tariff Act of 1930,* Public Law No. 316, 46 Stat. 590 (1930).

12 Kenneth W. Dam, *The GATT: Law and International Economic Organization* (Chicago: University of Chicago Press, 1970).

13 Clair Wilcox, *A Charter for World Trade* (New York: MacMillan, 1949).

through national legislation. Most countries have passed legislation relating only to some of their GATT obligations, and rarely to the letter. Hudec has characterised the US situation, for example, as occupying "... a middle position in which the Executive has discretionary power which allows him to comply with GATT or not, according to policy decisions that are not reviewable."[14] Phegan has observed that no Australian tariff legislation, including that relating to antidumping and subsidy countervailing, even makes reference to the relevant GATT obligations.[15] On this issue Tumlir has concluded that:

> In most countries private parties derive only very limited rights from the international agreement and, consequently, the courts have little opportunity to interpret and enforce its terms. Governments – more specifically, the executive branches – themselves interpret the meaning of the obligations they have accepted, and in the case of international conflict, the diplomatically agreed upon rules continue to be interpreted by diplomacy.[16]

A more practical difficulty is that the "diplomatically agreed upon rules" are neither clear, comprehensive, nor always consistent with the objectives of the Agreement. The GATT is a compromise document, in which the influence of the producer interests which it was designed to constrain is apparent on almost every page. This manifests itself in three ways: ambiguity, exceptions and exclusions.

A certain amount of ambiguity can be found in any agreement and is often essential in the political sphere. Its extent is generally proportional to the disparity in the final positions of those who sign it. Fritz Machlup has observed:

> We have often seen how disagreements among scholars were resolved when ambiguous language was replaced by clear formulations not permitting different interpretations. The opposite is true in politics. Disagreements on political matters, national or international, can be resolved only if excessively clear language is avoided, so that each negotiating party can put its own interpretation on the provisions proposed and may claim victory in having its own point of view prevail in the final agreement.[17]

14 Robert E. Hudec, "The Legal Status of GATT in the Domestic Law of the United States," in Meinhard Hilf, Francis G. Jacobs and Ernst-Ulrich Petersmann, eds, *The European Community and GATT* (Boston: Kluwer, 1989), p. 187 at p. 248.

15 C. Phegan, "Domesticating the GATT: International Trade Organizations in Australian Law," in Australia, Attorney-General's Department, *Tenth International Law Seminar, Australian Academy of Science,* Canberra, 18-19 June 1983 (Canberra: AGPS, 1983).

16 Jan Tumlir, *Protectionism: Trade Policy in Democratic Societies* (Washington, D.C.: American Enterprise Institute, 1985), p. 27.

17 As cited in Richard N. Cooper, *Currency Devaluation in Developing Countries,* Essays in International Finance, No. 86 (Princeton: Princeton University Press, 1971), p. 11.

Ambiguities abound in the GATT. In some cases they have obviously been intentional, such as in the Subsidy Code's treatment of production subsidies with trade effects; in others they have been exploited to introduce policies which are contrary to the spirit of the GATT, such as the EC's variable import levies, or the tariff quotas used to protect Australian textiles and clothing, both of which amount to quantitative restrictions. Even on the cornerstone principle of the GATT, non-discrimination, there are different interpretations, such as concerning its applicability in the case of emergency relief and voluntary export restraints (referred to as "grey-area" measures).[18]

In a speech honouring the GATT's fortieth birthday, Paul Volcker, former head of the US Federal Reserve, quoted the following grievance of an acquaintance:

> The General Agreement has two articles on free and non-discriminatory trade and eighteen articles of exceptions .... My official counterparts in developing countries keep telling me their restrictive practices are "GATT legal." [19]

One problem to which Mr Volcker's friend is referring is the section (Part IV) of the General Agreement which provides special treatment to developing countries, essentially giving them carte blanche to protect their industries on "development" grounds.[20] (This has symbolic significance of major proportions: its message is that liberal trade is bad for development, a luxury that only rich countries can afford). But developed countries can also make use of a range of exceptions, including escape clauses and anti-dumping provisions, designed exclusively to avoid harm to domestic (uncompetitive) producers, even where this disadvantages the community as a whole.

Pressure group influence is also apparent in a range of sectors which receive special treatment in the GATT. In the 1940s, the predominant industry pressure group in the United States was agriculture and this was the sector which first received special treatment. In the General Agreement, export subsidies are permitted for agricultural but not manufacturing products, and quantitative restrictions are permitted where necessary to support domestic marketing (price support) arrangements. As Dam has said, "the agricultural exemption was drafted by the American ITO negotiators, who were keenly

18 John H. Jackson, "Consistency of Export-Restraint Agreements with the GATT," *The World Economy,* Vol. 11 (Dec. 1988), p. 485.

19 Paul A. Volcker, "The GATT Under Stress – Is There Life 'After 40'?" address on the Fortieth Anniversary of the GATT, Geneva, 30 November 1987, p. 11.

20 For a history and detailed analysis of these provisions, see Robert E. Hudec, *Developing Countries in the GATT Legal System,* Thames Essay No. 50 (London: Gower for the Trade Policy Research Centre, 1987).

aware that no treaty that impinged upon the US farm program could receive the constitutionally-required senatorial approval."[21] Subsequently, agriculture was de facto excluded from GATT obligations altogether (beginning with the precedent of the US waiver in 1955). The next pressure group to flex its political muscles was the cotton producers in industrial countries, who succeeded in extracting that industry from GATT's reach, paving the way for the more comprehensive official derogation called the Multi-fibre Arrangement.

Reciprocity

The reciprocity logic as a means of countering domestic resistance to liberalization also has some flaws. For one thing, it assumes that exporters derive as much organizational and lobbying incentive from the (positive) prospect of foreign liberalization, as import-competing industries derive from the (negative, to them) prospect of domestic liberalization. Casual observation tells us that that is generally not the case.

The reason for this could be called the "bird-in-the-hand" syndrome. Import-competing firms generally have a clear idea of the expected cost to themselves of domestic liberalization and they tailor their lobbying efforts accordingly. (They can also point to workers who have jobs that they will lose under trade liberalization). The incentives on the export side, however, are more muted. Exporters are unlikely to have such a clear idea of the expected gain from any liberalization concessions extracted from foreign governments. This is because of (a) uncertainty about their competitiveness relative to other potential new entrants and (b) more importantly, uncertainty about whether foreign concessions will actually lead to more open markets – doubts fully justified by the demonstrated capacity of governments to substitute alternative barriers for those bargained away.

The idea that pressure from foreign exporters can help offset that from domestic producers also does not accord with experience. While foreign exporters can have an influence on policy, particularly through the medium of their governments, on the critical protection issues it is generally the domestic producers who win the day. Foreigners start out with some obvious handicaps: they lack political representation, access to the bureaucracy and the sympathy of the local populace.

The reciprocity approach can actually worsen the domestic climate for liberalization by inculcating or reinforcing mercantilist perceptions about the

21 Kenneth W. Dam, *The GATT and International Economic Organization* (Chicago: University of Chicago Press, 1970), pp. 259-260.

origin of the gains from trade and policy reform. Economists have often complained that the very language of trade negotiations is misleading – with "concessions" suggestive of an economic sacrifice, justified only by foreign "compensation." Tumlir has described the slippery slope down which reciprocity has gone:

> The first conclusion which the participants drew from their analysis of the interwar economic experience was correct: when every country protects its economy, all economies suffer. The next conclusion was not, however, the equally correct one: Therefore, liberal (free) trade is the best policy for all countries. It was drawn, instead, in the more ambiguous way: Therefore, liberal (free) trade is the best policy when all countries practise it. In this form it was liable to debasement, which duly occurred, into the version in which most governments profess liberal policy today: Liberal (free) trade is a good policy only if all countries practise it. This formulation now enables countries to use any failure of their trading partners to live up to the rules for justifying their own protectionist sins.[22]

In sum, the flaw in the reciprocity approach is that it depends on an understanding of the gains from trade and the domestic benefits from a country's own liberalization, but does nothing to facilitate that understanding. Indeed it serves to erode it. And this is compounded by ambivalence in the legal side of the GATT. The original understanding of GATT as a contract freely entered into, containing rules and procedures that promote liberal trade in the national interest of its members, no longer has wide support within member countries. If the GATT system is to function properly that understanding must be regained.

The Need for Domestic Transparency

The biases in national policy-making environments have led to the capture of the GATT by domestic political forces, instead of the other way round. (To fall back on our classical analogy, the cords which bind Ulysses to the mast have proven too weak to resist the Sirens' insistent call). GATT negotiations in Geneva have become a game of foreign "access seeking," all the while minimising national "concessions." And, back home in national capitals, governments continue to choose alternative, GATT-proof means of protecting their most insistent and least competitive industries. In so doing, they find ample cover in the ambiguities, exceptions and exclusions which permeate the General Agreement.

It has thus become clear that the GATT on its own cannot be expected to overcome the protectionist predisposition of national policy-making envi-

22 Jan Tumlir, "International Order and the Decline of Multilateralism," an address to the Australian Economics Society, Canberra, March 1983, pp. 6-7.

ronments. The second line of constitutional entrenchment depends on the existence of a first (domestic) line – and that is not there.

A national solution to the tyranny of minorities in economic policy is sometimes seen as requiring an explicit constitutional rule, such as the outright forbidding of trade barriers. But, putting to one side the arguments against any direct constitutional rule of this kind, no free-trade rule could ever hope to come into being without a widespread public belief that free trade was a good thing. It is, after all, the absence of such a conception that has contributed to the problem in the first place.

Analysis of the forces behind protectionist policies shows them to have been strengthened by the ignorance of the public at large and of those who bear the burden of protection (consumers and exporters) in particular. This problem has been compounded at the administrative level by fragmented industry-specific structures. The informational lacunae biases the policy-making environment in the protectionist's favour and precludes the legislature and the executive from having the comprehensive discussion about tradeoffs that is a prerequisite for good laws and policy-making in the national interest.[23]

The information on which this discussion depends will not be satisfactorily produced by private agents because, as indicated earlier, they lack the incentive to do so on the needed scale. This information is a public good, not only in the usual market failure sense, but also in the sense that much of it is generated within the public sector and is not made available to the public.

International Proposals

In recent years, two important reports by international study groups have drawn attention to these domestic considerations. One group was appointed by GATT's Director General in the aftermath of the unsatisfactory crisis meeting of trade ministers in November 1982. The group, headed by Fritz Leutwiler (former President of the Bank for International Settlements) identified a lack of openness in trade policy at the national level as one of the fundamental causes of the crisis in world trade relations:

> A major reason why things have gone wrong with the trading system is that trade policy actions have often escaped scrutiny and discussion at the national level.[24]

23 F. Knight, *Intelligence and Democratic Action* (Cambridge: Harvard University Press, 1960).

24 Fritz Leutwiler et al., *Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT Secretariat, 1985), p. 35..

The first of the Leutwiler Report's fifteen "proposals for action" was directed at improving domestic transparency. It recommended that the "costs and benefits of trade policy actions ... should be analyzed through a 'protection balance sheet' ... similar in aim to the 'environmental impact' statements now required for construction projects in some countries."[25] It also recommended that independent government agencies be developed in all countries to act as "magnifying glasses" to highlight the domestic distribution of the costs and benefits of protection.

The institutional requirements for domestic transparency were considered in more detail by another study group, established by the Trade Policy Research Centre in 1983 and chaired by Olivier Long, former Director-General of the GATT. Its report (the Long Report) concludes that the fragmented administrative arrangements found in most countries have contributed to a lack of awareness of the wider economic effects of protection, and have heightened the already dominant influence of industry groups seeking protection.

> The achievement of an economy-wide, long-term perspective in trade policy requires that influences wider than those associated with claimant industries should be brought to bear on the policy-making process. This will not occur on its own. It depends on having procedures that provide for public scrutiny of protective action and that promote domestic understanding of its effects. We call this "domestic transparency" – open, informed policy-making.[26]

The Long Report proposed that an agreement be negotiated in the Uruguay Round for the establishment in GATT member countries of special "domestic transparency agencies," with the following general features:

- The institution responsible should be independent of domestic political pressures and should not be identified with any industry-specific branch of the domestic bureaucracy. The framework for its work must be economy-wide.
- Arrangements should be structured in such a way that the institution has a broad mandate to enquire into all forms of public assistance to industries. Moreover, the information about the effects on the economy of public assistance to industries should be communicated as a matter of course to policy makers, to members of the legislature and to the community at large.

25 Fritz Leutwiler et al., *Trade Policies for a Better Future: Proposals for Action*, p. 35.

26 Olivier Long et al., *Public Scrutiny of Protection: Domestic Policy Transparency and Trade Liberalization*, Special Report No. 7 (London: Gower for the Trade Policy Research Centre, 1989), p. 21.

- Its activities should be purely advisory, with no executive or judicial role; and its concern should be solely to provide the information about the wider implications of industry and trade policy which legislatures and their constituents now find so difficult to address, to understand and to resolve.[27]

The output of such an agency would essentially provide the "protection balance sheet," and its activities the magnifying glass, that were identified by the Leutwiler Group as being necessary to increase the openness of trade policy at the national level. But it would have the advantage of a continuous existence, independent from the industry-specific elements of the bureaucracy, and would hence be able to maintain the economy-wide perspective and generate the quality of information that appears to be lacking under present administrative arrangements in most countries.

The Long Report's recommendations were not intended to be attached to any particular institutional form. However, in a brief survey of existing institutions, it found that only the Industries Assistance Commission (IAC) in Australia appeared fully to meet the three criteria of openness, independence and an economy-wide perspective. The IAC was also mentioned, along with the United States International Trade Commission (USITC) (a comparison to which I return) by the Leutwiler group. It is useful therefore to consider what effect that body has had on trade and industry policy in Australia.

Domestic Transparency at Work: the IAC

This is both an opportune and a presentationally awkward time to discuss the role of the Industries Assistance Commission (IAC) in Australia. That is because in March 1990 the IAC was formally incorporated into a new organization, the Industry Commission, which continues its work under a somewhat broadened legislative mandate. Thus while the following discussion refers to the IAC in the past tense, it needs to be emphasised that much of it continues to apply to the new body as it operates today.

The IAC, which was created in 1974, itself replaced another institution, the Australian Tariff Board. The Tariff Board had operated since 1921 to provide openness and independence in advice to Parliament about tariff-making. Thus it fulfilled two of the three criteria for a domestic transparency institution identified by the Long Report. But it did not use economy-wide criteria in evaluating industry claims for protection and there were no explicit require-

27 Olivier Long et al., *Public Scrutiny of Protection: Domestic Policy Transparency and Trade Liberalization*, pp. 27-28.

ments for it to do so. Instead, the Tariff Board's objective was to determine the level of tariff protection needed to make Australian production profitable, without imposing "unnecessarily high costs" on consumers and other industries. The rule was protection according to need, and through its first forty years very few claimants were unsuccessful. As a result, tariff levels in Australia were very high in the mid-1960s.

By this time, some members of the Tariff Board were seriously concerned about the role the Board was playing in the advisory process. In the words of its new chairman, G. A. Rattigan:

> The Board was not carrying out all the functions given it under the Tariff Board Act. It was not providing, through its inquiry procedures, an opportunity for informed public discussion about major issues regarding assistance for particular industries; it was not fulfilling the explicit requirement in the Act to report annually on the operation of the Tariff and the development of industries; it was not using its powers to initiate inquiries to examine and report on matters that were obviously cause for public concern, for example, the continued protection of a number of industries by very high levels of Customs duty imposed in 1929-30 as an emergency measure during the great depression.[28]

In a watershed annual report, the Tariff Board argued that it should engage in a systematic review of industry protection.[29] It said that it would use the relatively new concept, the "effective rate of protection," to get a picture of the true relative levels of industry protection and the distortions and costs caused by the highly fragmented tariff that had developed over the preceding four decades.[30]

As Rattigan documents,[31] this new thrust in the Board's work stimulated intense debate in Australia. It was strongly resisted by manufacturers and their bureaucratic sponsors. But the information about the costs of protection which the Board had begun to include in its public reports also brought into the debate some of the losers from protection whose voice had previously not been heard. The result was that the Board was permitted to do its industry

28 G. A. Rattigan, *Industry Assistance: The Inside Story* (Melbourne: Melbourne University Press, 1986), pp. 22-23.

29 Tariff Board, *Annual Report 1966-67* (Canberra: AGPS, 1967).

30 The effective rate of protection is a relative measure of the net assistance received by different industries, taking account of both protection on outputs ("nominal assistance") and inputs. See Gary Banks, "A Role for ERA's in the GATT Forum?" *The World Economy* Vol. 12 (June 1989), p. 219.

31 See G. A. Rattigan, *Industry Assistance: The Inside Story* (Melbourne: Melbourne University Press, 1986), Chapter 3.

protection review and to continue providing information to the public on the effects of protection on the Australian economy.

Role of the IAC

That work laid the foundation for the creation of the Industries Assistance Commission, following a change of government in 1972. The main difference with the Tariff Board was that the Commission's charter extended to all forms of assistance and all industries (not just tariffs to manufacturing) and its statutory guidelines were made explicitly economy-wide in scope.

Looked at against the three benchmarks identified in the Long Report, the IAC's features (which also apply to the Industry Commission) can be summarised as follows:

- Independence. The Commission operated under the authority of an Act of Parliament to which it was ultimately responsible. Its role was purely advisory, having no judicial, executive or administrative functions. Members of the Commission were appointed for up to five years and could not be removed except by Parliament.
- Openness. The government was required to obtain advice from the IAC, based on public inquiries, before changing tariff, quota or financial assistance to industry. The IAC was also required to hold public hearings in its inquiries. It normally released its reports to the public in draft form, before finalizing its recommendations to government. The government adopted the practice of publishing the IAC's final reports before taking a decision on them. The IAC was required to prepare an annual report covering its operations and the general structure of assistance to Australian industry and its effects. The government was also required to publish the Commission's annual report.
- Economy-wide mandate. This was covered by a set of guidelines in the Act which stated that the Commission should be concerned with improving the efficiency with which the economy uses its resources; ensuring a consistent industry policy; taking account of the interests of consumers and users of products affected by the Commission's proposals, and providing for public scrutiny of assistance measures.

The IAC provided the "public good" of information about industry assistance through two dimensions to its work. The first involved inquiries into particular industries' claims for assistance, in response to government requests (references), the output from which was a public report. The importance of this aspect was expressed by the Prime Minister, when introducing the IAC bill, as follows:

> It will be apparent that the reference to the Commission of questions relating to assistance for individual industries cannot be optional: if some industries, particularly those which stand to lose most from public exposure of their claims, can avoid the process of public inquiry the fundamental purpose of the Commission will be frustrated.[32]

The second side of the IAC's information function was a continuing, economy-wide "mapping" of protection and assistance levels, the results of which were reported in occasional papers and, more importantly in the annual report – which was also a vehicle for Commissioners to comment on any protection issues. The importance of the Commission's general reporting and analysis has been demonstrated by subsequent developments in trade and industry policy in Australia, to which we now turn.

Influence on Policy

From 1974 to 1990 the IAC produced over 450 advisory reports, covering most industries in the manufacturing and agricultural sectors, as well as many informational reports on assistance issues and its annual report overviews. The quality of this work (if not always its conclusions) is undisputed in Australia. Rattigan cites the assessment of John Uhrig, a prominent Australian businessman, who was commissioned by the government to conduct an independent review of the IAC:

> It is important to establish the fact that during its ten-year life, the Commission has built up an enviable reputation as an institution of very high professional standards. It has completely fulfilled the expectations of the community for objectivity and independence of view in its provision of advice to Government... The Commission has pioneered the measurement of effective rates of assistance and has applied the concept to provide information on the relative assistance provided to different activities. Its rigorous analytical approach to assistance issues has forced parties seeking assistance to direct their arguments within a rational framework of analysis which is wider than mere self interest.[33]

The IAC not only forced parties seeking assistance to provide a better justification than self-interest, it gave a voice and informational ammunition to those likely to be adversely affected. In one important case cited by Rattigan, the IAC could be said to be largely responsible for educating the farming sector about the costs of manufacturing protection which their political representatives (the Country Party) had actually been instrumental in fostering. Today, the farmers' peak organization has become an important political force for

32 Australia, House of Representatives, *Debates*, No. 16 (25-27 September 1973), p. 1633. (Hon. E. G. Whitlam).

33 John Uhrig, *Review of the Industries Assistance Commission* (Canberra: AGPS, 1984), pp. 14-15.

trade liberalization in Australia (recently arguing for the elimination of all tariffs by 1995).

Ultimately, the test of the IAC's influence is what has happened to protection levels in Australia. The IAC has itself generated the data on which it can be judged. As can be seen in Table 1, nominal and effective rates of assistance fell substantially over the life of the IAC and will be significantly further reduced when the current program of tariff reductions is completed.

Table 1: Protection Trends In Australia

(percent)

	1971	1988	Mid 1990s
Nominal Assistance:			
manufacturers	23	11	8
agriculture	15	4	3
Effective assistance:			
manufacturers	36	19	13
agriculture	28	9	7

Source: IAC, Annual Reports; Industry Commission estimates.

The largest proportion of the overall reductions came from two across-the-board tariff cuts, one in 1973, the other initiated in 1988. The first, a 25 per cent reduction, was implemented before the IAC had formally replaced the Tariff Board. However, it followed several years of information and analysis by the Board, whose Chairman was on a committee which recommended it. The second, continuing program of tariff reductions was also not the direct outcome of a recent IAC inquiry, but was consistent with a report of an inquiry some years before and the views regularly put forward thereafter in IAC Annual Reports and reports on specific industries.[34]

More significantly, almost none of these reductions stemmed from multilateral trade negotiations – where the absence of agricultural liberalization gave Australia respectable reasons, under the GATT reciprocity logic, for abstaining. Rather, they all occurred for domestic reasons; reasons generally based on information and analysis provided by the Tariff Board and the IAC. Nevertheless, the lesson from the Australian experience with the IAC is that the policy influence of a transparency agency is not sudden or dramatic, but occurs gradually through a cumulative educative process.

34 See IAC, *Approaches to General Reductions in Protection*, Report No. 301 (Canberra: AGPS, 1982) and *Annual Report 1986-87* (Canberra: AGPS, 1987).

Information at the International Level: the TPRM

The Leutwiler Report, had an important influence on the agenda of the Uruguay Round, including a negotiating group devoted expressly to the Functioning of the GATT System (FOGS). Both the Leutwiler and Long reports emphasised the need for greater transparency at the national level. In the event, it was another Leutwiler recommendation – on processes to promote greater openness and accountability internationally – that was picked up in the FOGS group:

> We believe that governments should be required regularly to explain and defend their overall trade policies. As a means to this end, one possibility would be periodic examinations, annually for the major trading countries, and less frequently for others. For each such examination, a panel representing three to five governments would be established to review a GATT Secretariat report on the trade policies of the country in question, subject its representatives to questioning, and make recommendations. This procedure would be somewhat similar to the examination of national economic policies in the OECD. ... In addition, the GATT Secretariat should be empowered to initiate studies of national trade policies; to collect, maintain, and publish comprehensive information on trade policy measures and actions; to call for further information and clarification regarding these measures and actions; and to invite discussion of them. [35]

This became the main focal point of the FOGS group, which at the Montreal mid-term review of December 1988 agreed on arrangements of this kind, dubbed the Trade Policy Review Mechanism (TPRM). This is a fairly marked change from traditional GATT practice. In the original conception of the GATT, general surveillance over the trade policies and practices of contracting parties had not been provided for because it was seen as unnecessary. The GATT's two key, system-forming rules – non-discrimination and tariff-only protection – together with the reporting requirements for changes in protection (including reverse notification by affected parties) were intended to ensure that all trade policy conduct would be visible and its effects understood.

The means by which this system was undermined have already been described. The increased use of non-tariff and grey-area measures, about which little was known, had already led GATT members to institute six-monthly Council reviews of trade policy developments after the Tokyo round.[36] These

35 Fritz Leutwiler et al., *Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT Secretariat, 1985), p. 42.

36 See Richard Blackhurst, "Strengthening GATT Surveillance of Trade-Related Policies," in Ernst-Ulrich Petersmann and Meinhard Hilf, eds, *The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Aspects* (Deventer, Netherlands: Kluwer Law and Taxation Publishers, 1988).

reviews were a brave attempt to get a handle on what was happening, but they suffered from a lack of published information and the cooperation needed to fill in the gaps. Nevertheless, the precedent they established, and the growing recognition among GATT members that the new round of negotiations could hardly liberalize barriers that were hidden from view, created the right conditions for agreement in the FOGS group on the new surveillance vehicle .

The TPRM was indeed one of the few success stories of the mid-term review. Its design broadly follows the proposal of the Leutwiler Report, just cited, and its stated objectives were:

- to contribute to *improved adherence to GATT rules, disciplines and commitments*, and hence to the smoother functioning of the multilateral trading system.
- by achieving greater *transparency* in, and *understanding* of, the trade policies and practices of contracting parties.[37]

This appears closely related to the concept of domestic transparency, but there is an important difference, reflected in this further elaboration of objectives:

> ... the function of the review mechanism is to examine the impact of a contracting party's trade policies and practices on the *multilateral trading system.* [38]

Thus the TPRM is intended to be about the external, not internal (domestic) effects of trade-related policies. This is an important distinction, given the diagnosis of the origin of trade policy problems outlined earlier. Before discussing this point further, a few words are needed about what the TPRM actually is and how it works.

Operation of the TPRM

The basic operation of the TPRM revolves around two reports on the trade policies of contracting parties – one prepared by the country concerned, the other by the GATT Secretariat (normally following a visit to the country). These become the subject of scrutiny in the Council and are then published, along with the minutes of the Council discussion. The frequency of reviews for each country is related to its share in world trade: the larger a country's trade share, the more frequently it is reviewed.

37 GATT Document MTN. TNC/7 (MIN) (9 December 1988), p. 35 (emphasis added).

38 GATT Document MTN. TNC/7 (MIN) (9 December 1988), p. 35 (emphasis added).

Each report must follow an agreed format, which "aims to secure ... a level of essential detail which is both meaningful and readily achievable." The format includes information on:

- objectives of trade policies;
- the institutional and regulatory environment;
- trade policy measures, their sectoral incidence and trends; and
- relevant external economic and trade policy developments.

The definition of trade policies is quite broad, covering tariffs and the principal non-tariff barriers as well as a catch-all item: other government assistance.

The first reviews were held in December 1989, comprising Australia, Morocco and the United States, in that order. Sweden and Colombia were scheduled for review in June 1990, followed by Canada, Hong Kong, Japan and New Zealand in the summer and the European Communities (as a single entity), Hungary and Indonesia in the autumn.

Each review session of the Council is conducted according to the following agreed agenda:

- introductory remarks by the Council Chairman;
- introductory remarks by the contracting party under review;
- statement by a lead discussant (a delegate from another country);
- supplementary remarks by a second discussant;
- statements and questions from the floor (mostly with advance notice);
- responses by the contracting party under review; and
- concluding remarks by the Chairman.

Prospects and Limitations

The declared objective of the TPRM is to promote greater adherence to GATT rules by raising the transparency of trade policy practices. The logic in the Long Report is that transparent policies at the national level are more likely to be in the general interest than those that are hidden from scrutiny. Can the TPRM – an international device – achieve this sort of effect?

The TPRM is clearly a major advance in bringing trade barriers into the open within the GATT forum. Its coverage of most forms of assistance to industry and the fact that all of this information, together with the Council discussion, are published, are positive features. But some important reservations remain.

First there is the question of the quality of information that it generates. One problem is that the information requirements of the TPRM, although more demanding than under the previous half-yearly review of developments in the trading system, continue to be mainly descriptive. In particular, there is no requirement to use any quantitative measures of aggregate assistance, which would indicate the protective effects of non-tariff as well as tariff barriers. Without some such measure it will be very difficult to gauge trends in assistance over time or among industries.[39]

This may be a symptom of an underlying motivation problem. Incentives in the TPRM are not favourable to each country being as forthcoming as it might be. In providing information for scrutiny by other countries there will be an inevitable tendency for governments to present information and analysis which makes them look good and to avoid measures which are too informative. Although not intended to be a legalistic exercise, self-incrimination – and the prospect of retaliation – cannot be ruled out. This is especially so given the increasingly unilateralist tendency in unfair trade provisions in national law, such as Super 301 in the United States.

A more fundamental question concerns the means by which the TPRM can be expected to meet the underlying objective of improved adherence to GATT. This has not been spelt out, but the expectation appears to be that peer group pressure resulting from the reviews will be helpful. (The second discussant in the US review put it thus: "... countries will have greater sensitivity about the impact of their trade policies on others. In so doing, [the TPRM] could have the impact of voluntary modification of policies"[40]). This is consistent with the traditional GATT logic, based on external rules and commitments influencing national policy-making, and the same difficulties in overcoming the biased domestic environment, discussed earlier, are likely to apply.

A more promising avenue is through the "trickle down" or dissemination of TPRM information in each country, where it could be useful to the domestic debate. But the TPRM's potential effectiveness at this level is subject to two limitations. First, the information derived from international surveillance comes after the event. It is a record of what has already happened and cannot have a direct influence on decisions about new measures. Second, and more importantly, it is focussed on the effects of trade barriers on the multilateral

39 See Gary Banks, "A Role for ERA's in the GATT Forum?" *The World Economy*, Vol. 12 (June 1989), p. 219.

40 GATT, *Trade Policy Review: The United States of America, 1989* (Geneva: GATT Secretariat, 1990), p. 333.

trading system (other countries) rather than the economic effects within the country concerned. That is a logical and legitimate objective within the GATT framework, but it does not help domestic constituents in member countries to appreciate the domestic costs of their country's trade policies.

Some of these concerns are verified by reviews that have already taken place. The contrast between those of Australia and the United States is especially revealing.

Comparison of Australian and US Reviews

Both reviews were successful in pulling more information together, and allowing more focussed discussion about countries' trade policy practices, than has previously occurred in the GATT. GATT delegates generally should have gone away with a better understanding of policy developments, and the defending contracting parties with a clearer understanding of what policies are of most concern to their trading partners. For the United States, that was clearly the fairness provisions (Section 301 and Super 301) as well as anti-dumping and countervailing measures. For Australia, it was the relatively high protection continuing to be provided to textiles, clothing, footwear and the automotive industry. There were nevertheless some important disparities between the Australian and US reviews.

Quality of Information

First, there was a major difference in the quality of the information on trade policy measures contained in the two countries' reports. In particular, the US reports, while containing descriptive detail about policy measures and their legal basis, contained no measures which could allow a reasonably accurate assessment of either overall trends in protection or relative protection levels in different sectors. This contrasts with the Australian reports, which contain estimates of nominal assistance (tariff and subsidy equivalents) and effective rates of assistance over time and across industries in the manufacturing and agricultural sectors.

For its overall estimates of protection, the United States only provided average tariff levels, such as were already available to GATT members through the Secretariat's Tariff Study. These tariff levels are very low, but given the rise in non-tariff barriers in the United States that is almost beside the point. In contrast, Australia's overall assessment is more comprehensive and revealing, drawing on the aggregate measures just described.

Moreover, the GATT Secretariat's independent report on the United Stated seems more informative than the US report on itself, whereas there is no discernible difference in the case of Australia. This is most apparent in the Secretariat's more detailed and focussed treatment of the sectoral incidence of protection in the United States. Nevertheless, the Secretariat was still only able to present information of a descriptive kind, or at best on the number and trade coverage of measures. None of this is as informative as it might be.

Motivation

There is also a distinct difference in the tone of the US and Australian governments' reports. This is highlighted by a comparison of their representatives' introductory remarks to the TPRM Council sessions.

The US appears to have used the occasion more to justify its actions than to explain them. As noted earlier, this is a natural reaction in the circumstances of a TPRM inquisition. It manifested itself in a number of ways. First, the United States makes frequent comparisons between its own relatively liberal regime and the worse sins of other countries. It also provides some misleading statistics as evidence of low protection, in particular the old EC device of focussing on import shares and suggesting that a relatively high market share of imports indicates relatively low protection – which is nonsense. In a similar vein, the US report misrepresents voluntary export restraints as less costly than other quantitative restrictions. The report also justifies unilateral interpretation by the United States of what is "fair" in other countries' trade policies, and retaliatory action based on section 301 provisions as consistent with multilateralism. The following excerpt is representative:

> On page 140, the Secretariat's report characterizes the semi-conductor and automobile sectors as enjoying "relatively high levels of protection." In our view, we do not think this statement is correct. ... In recent years, imported passenger cars have accounted for about 30 per cent of the United States retail sales market. If this does not sound to you like the consequence of a relatively high level of protection, here is why: United States tariffs on auto imports are 2.5 per cent. Compare this with the duty rates applied in other countries. ... Nor does the United States have non-tariff barriers on autos. We have no local content requirements or even local content "incentives." Some questions have been raised about a voluntary restraint agreement with Japan on automobiles. ... In 1985, the United States announced that it would not ask Japan to continue the restraints. However, Japan indicated that it would continue to limit automobile exports to 2.3 million units annually. From the United States' point of view there are no restraint policies now in place which in any way restrict auto imports. ... Other countries, however, do limit imports of automobiles from certain sources, and these limits are far more restrictive than the voluntary restraints mentioned earlier.[41]

41 GATT, *Trade Policy Review: The United States of America, 1989,* pp. 324-325.

There is very little of this defensiveness in the Australian delegate's introduction to his own country's review. He notes that "constructive criticism at the multilateral level will enhance the environment for domestic change" and the report does provide ammunition for critics. The delegate is able to say that Australia's protection levels are declining, but then he has firm evidence to support his claims. The report is also quite open about the high levels of assistance which a few privileged industries receive. But then, with the nominal and effective rates of assistance presented in the report, it would be difficult to claim otherwise.

Accounting for the Difference

The inferiority of the contribution of the United States to that of Australia, a smaller country in all economic respects, obviously does not reflect a lack of available technical expertise. This is borne out by the work contained in the *National Trade Estimates Report*, prepared as a basis for Super 301 action, which states that "the report is required to provide, 'if feasible,' quantitative estimates of the impact of these foreign practices upon the volume of U.S. exports."[42] This is more than the US TPRM report does for its own trade barriers, giving no real indication of their trade restrictive or domestic effects. (A similar observation can be made about the European Communities, which has published detailed studies about the benefits of removing internal barriers under the 1992 exercise, but none about the costs of its external trade barriers). The Australian report not only provides summary measures of trade and resource allocation effects of its various assistance measures, but also presents the results of sophisticated economy-wide modelling simulating their impact on GDP.

Good information at the international level requires an incentive to produce it. The best incentive is where it is already being produced for domestic purposes, rather than to meet external obligations. That seems to sum up the difference between the Australian and US reports.

This is not to suggest that the US report was not informative or useful. But, given that the United States is likely to be more forthcoming than many other countries, it does raise concerns about future contributions. There is the very real prospect that, without greater transparency at the national level, the international surveillance process could deteriorate into a propaganda exercise for the countries under review. A control on this is the Secretariat's own

42 Office of the United States Trade Representative, *1990 National Trade Estimate on Foreign Trade Barriers* (Washington: US Government Printing Office, 1990), p. 1.

reports, but as the US review shows, they can only be as revealing as the available data.

Towards an International Agreement on Domestic Transparency

The Leutwiler and Long recommendations on domestic transparency were raised fairly early in the FOGS group discussions (first by New Zealand), but any progress was curtailed in the push to secure a TPRM at the Montreal mid-term review. Nevertheless, the issue has remained on the agenda. Indeed in recent months there has been a resumption of discussions, and a number of countries (Australia, Canada, New Zealand and Hong Kong) have formally put forward a proposal that contracting parties reach an agreement to promote greater transparency in national policy-making. The proposal provides an illustrative list of possible domestic arrangements.

What Sort of Agreement?

The Long Report recommended that an agreement involve "the designation of an independent, and preferably statutory, body within each country to prepare regular reports ... on public assistance to industries."[43] It was envisaged that the designated body would have only an advisory and informational role; its reports would cover all forms of assistance to all industries and be publicly available; and the basis for its advice would be "domestic economic efficiency and the general public interest."

Although it does not say so, the Long Report seems to be proposing the establishment in GATT member countries of organizations along the lines of the IAC. However, it was also recognised that organizational arrangements designed to fit in with the Australian system of government may not be appropriate or acceptable elsewhere. The question is what is the bare minimum of institutional attributes needed to achieve domestic transparency in protection policy. These were characterised earlier as independence, openness and an economy-wide perspective, and all three play an important, mutually reinforcing role: without some independence, the capacity of the organization to withstand sectional interests, which is vital to its effectiveness, will be jeopardized; without openness in its proceedings and public availability of its output, its educational function will be curtailed; and, without a requirement to consider effects on the economy as a whole, the advice and information it provides cannot be helpful in evaluating policies in the national interest.

43 Olivier Long et al., *Public Scrutiny of Protection: Domestic Policy Transparency and Trade Liberalization*, Special Report No. 7 (London: Gower for the Trade Policy Research Centre, 1989), p. 51.

While this still provides scope for variation among participating countries, it does exclude:

- existing administrative departments, or the research arms of such departments – particularly those with responsibility for sections of industry;
- private, profit-oriented organizations;
- government advisory or quasi-judicial bodies with narrow, industry-specific guidelines.

To be meaningful, therefore, it would be important for any agreement on domestic transparency to at least establish the general institutional characteristics required. It would also obviously be desirable to go beyond a best-efforts formulation. For example, and consistent with the Long Report, governments could agree:

- to nominate an agency to prepare, at arm's length from the executive, a public report annually on the structure of trade barriers and their effects on the domestic economy; and
- to subject requests for new or additional protection to public inquiry and report by that agency, on the basis of the economy-wide effects.

This may be too strong a formulation to obtain universal consent. Such consent is not essential to an agreement, as the GATT Codes show, but it is likely to be considered a necessary requirement in the FOGS context. There would in any case be no point in trying to impose obligations on any country. It would defeat the purpose of the exercise. Indeed, perhaps the main benefit in striving to reach a worthwhile agreement would be the ride up the learning curve about the value of domestic transparency that the discussion would provide for its members.

Issues and Possible Obstacles

One objection that has sometimes been raised against a GATT agreement on domestic transparency is that by telling governments how policy should be made, it would intrude on national sovereignty. But this is misplaced for two reasons. First, any agreement would be just that: like the General Agreement itself, it would not be requiring signatories to do anything which they did not already consider to be in their best interests. (Technically there is no limit on what consenting parties can do together in the GATT. The TPRM itself is an illustration of that). Second, it is a moot point as to whether an agreement on domestic institutional/procedural arrangements would be any more intrusive than rules about actual policy outcomes. In practice, the General Agree-

ment already contains constraints of both kinds – its antidumping provisions being a good example.

Compatibility

A more practical problem is whether transparency arrangements envisaged in the Long Report are capable of being implemented in most GATT countries. Although bound by an acceptance of the implicit market philosophy of the General Agreement, the membership of the GATT is quite diverse (with recent events in Eastern Europe that diversity is lessening). To some countries, the idea of a transparent protection policy process may appear alien or even threatening. But it is easy to overstate these difficulties. The majority of countries – and certainly the majors – should have little difficulty accommodating it in a systemic sense. Many countries already have government agencies which investigate and report on aspects of protection policy, which could be adapted to give them the necessary economy-wide perspective and independent role. This was the way in which the IAC itself was created.

For example, in the United States, a leading trade policy analyst has made the following observations about the USITC:

> The US International Trade Commission must, under present law, limit its injury investigations to the petitioning industry, although it can and does consider broader effects when it decides what forms of trade relief to recommend. One approach would be to widen the USITC's mandate so it would be required to publish a more comprehensive assessment of the impact of import restrictions, as well as the industry-specific findings on which its injury determination is based. This would include, but go beyond, the proposal of Senator John H. Chafee (R-RI) that the USITC evaluate the impact of trade relief on consumers. [44]

In a recent article, the former Chairman of the United States Federal Trade Commission saw in that organization a ready-made domestic transparency role and called on the President to designate it for that purpose.[45]

In Canada, there is the recently established Canadian International Trade Tribunal, which shares some of the main characteristics of the USITC and could presumably be adapted for a broader transparency role. Canada also has a review body which already has an economy-wide perspective, the Economic Council of Canada. The main requirement here would be to channel at least

44 I. M. Destler, *American Trade Policies: System Under Stress* (Washington: Institute for International Economics, 1986), pp. 219-220.

45 Daniel Oliver, "Federal Trade Commission and Domestic Transparency," *The World Economy*, Vol. 12 (Sept. 1989), p. 339.

part of its activities into industry assistance and protection questions on a continuing basis.

The Long Report surveys a range of possible institutional vehicles in other developed countries. And many developing countries also have agencies that could be adapted.[46] This building approach also has the advantage of avoiding the budgetary problems that might inhibit the establishment of a new agency in an already crowded administrative arena.

Acceptability

The acceptability in principle of the domestic transparency idea to a wide range of countries is demonstrated by the following decision from UNCTAD VII:

> Governments should consider, as part of their fight against protectionism, as appropriate, the establishment of transparent mechanisms at the national level to evaluate protectionist measures sought by firms/sectors, and the implications of such measures for the domestic economy as a whole and their effects on the export interests of developing countries. [47]

Looked at from the export angle, most governments should readily appreciate the value of having procedures in place in foreign countries which reduce the policy-making bias in favour of those who wish to close markets. The question is whether they would accept transparent mechanisms at home.

It is to be expected that such an initiative would be opposed by protectionist interests, who have an obvious interest in suppressing an understanding of the costs of (their) protection, and it may also be opposed by those arms of the bureaucracy which act as industries' sponsors in the policy-making process.[48] Nevertheless, in most countries the idea should be relatively easy to sell to the broader electorate. Indeed, like motherhood, it might be difficult for anyone publicly to oppose it.

In Australia there was considerable initial opposition to the establishment of the IAC. But there was also much support and, in time, that support broad-

46 See G. A. Rattigan, *Domestic Transparency Procedures*, Report prepared for the UNCTAD Secretariat, UNCTAD/MD/MISC. 23, 22 April 1988.

47 *Final Act of UNCTAD VII*, paragraph 105, subparagraph 4, TD/350.

48 An attempt by the USITC to include information on the effects on consumers of taking Section 201 action was apparently cut short by Congress through a rider in an appropriations bill.

ened. This is illustrated by the recent upgrading of the IAC's functions in the Industry Commission.[49]

"Crowding out"

In the lead-up to the Uruguay Round Mid-term Review, consideration of an initiative on domestic transparency in the FOGS group got put on the back-burner when efforts became focussed on the TPRM and an agreement on greater ministerial involvement. That the TPRM should have achieved precedence is understandable, given its greater familiarity (following the half-yearly reviews) and closer fit within the accepted GATT paradigm of external rights and obligations.

This time round, however, there is the further possibility that a domestic transparency initiative could be displaced by or subsumed in attempts to get agreement on institutional links with the IMF and World Bank. This is part of the quest for "coherence" in the international economic arena – the remaining item in the original ministerial mandate for the FOGS group. GATT's Director-General was instructed after the mid-term review to come up with some ideas on this (ill-defined) subject and did so in a report last September. The EC has since made some proposals.

This is not the place to discuss this subject in any detail. Suffice it to say that improving the links among international agencies to prevent them operating at cross-purposes, while useful, should not take precedence over getting greater coherence into national policy-making processes. Indeed, meaningful coordination at the international level is unlikely to be attainable in the absence of improved coordination nationally.

Summing Up

The founders of the GATT understood very well that the international trade conflicts that had debilitated the world economy in the 1930s were largely of domestic origin. The GATT was designed with the need to control domestic pressure groups in mind. Its rules and negotiating procedures have since brought average tariff levels down to historically low levels in the industrialised world. But the almost contemporaneous rise in non-tariff measures (the new protectionism) has demonstrated that the domestic policy burden of the GATT system is too arduous for it to carry alone.

49 IAC, *Annual Report 1988-89* (Canberra: AGPS, 1989).

As the Long Report has cogently argued, there is a great need to underpin the GATT by institutional arrangements at the national level. Those arrangements, referred to as "domestic transparency," are needed to reduce the overwhelming bias in favour of uncompetitive producer interests that exists in most countries. Governments and their constituents need better information about the economy-wide costs of protection (not just its industry-specific benefits) if GATT members are to be able to bring their policy conduct into line with the ideals embodied in the GATT.

Initiatives within the Uruguay Round provide hope for progress. The establishment of a trade policy review mechanism shows that GATT members recognize the need to raise the visibility of trade barriers and the accountability of governments for them. But the TPRM remains largely imbedded in the international arena, within the traditional GATT paradigm of external pressures and constraints. It is the second proposal, on *domestic* transparency, that has the most potential for addressing the national origins of protectionism. A meaningful step in this direction by GATT members could do much to restore the effectiveness of the GATT system itself.

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