9 The Uruguay Round

The Uruguay Round was first mooted in circumstances that appeared distinctly hostile to trade cooperation. As I already described in chapter 7, the general economic conditions of the early 1980s—severe recession, exchange rate instability, and problems of structural adaptation—had intensified protectionist demands in the industrially more established countries, who had resorted increasingly to measures that patently evaded or simply disregarded the agreed trade rules of GATT. Governments were "managing" a rising proportion of world trade through quantitative restrictions, whether directly imposed on imports or foisted on the exports of trading partners, and neoprotectionism found expression in the abuse of fair-trade laws. In face of such unilateral actions that flaunted the multilaterally agreed rules and procedures (in spirit, if not always in the letter), confidence in multilateral cooperation was eroding on all sides.

Even after the Uruguay Round had been formally initiated in 1986, negotiations advanced very slowly. More than once, there were fears that they might break down altogether. Circumstances did not appear to augur well for useful negotiations. Urged on by the more aggressive mood of Congress, as exemplified in the Trade and Competitiveness Act of 1988, the U.S. administration continued to resort to the threatened or actual use of unilateral measures. Impatient with the progress of multilateral negotiations, it announced a new interest in bilateral or regional free trade arrangements as an alternative way of gaining greater market access. Also, in the latter part of the 1980s, the European Community was striving to restore the momentum toward closer integration through its Single Market initiative and, when the Soviet empire began its rapid disintegration in 1989, was caught up in the large tasks of German unification and of defining new

political and economic relations with the Eastern European countries.[1]

Nonetheless, despite such tensions and distractions, the Uruguay Round was not only brought to a successful conclusion in 1994 but also promised, if its agreements were honored, to stand out as a major landmark in international trade cooperation. Its most immediate achievement was to revive confidence in the multilateral trade regime; there was again a prospect that countries would conduct much of their trade relations in an orderly and predictable way. But the round was no less notable for its enlargement of the multilateral regime to embrace a considerably wider swathe of commercial activities; it both broadened the sectoral coverage of the regime and extended its reach beyond regulations at national frontiers to internal laws and practices.

EARLY POSITIONS ON THE NEW ROUND

The idea of a new round of trade negotiations was fanned into life in the early and middle years of the 1980s. Though there were many opponents, it had a band of vigorous supporters among leading authorities on trade policy. Arthur Dunkel, then director general of GATT, was tireless in his calls for action to restore trust in the multilateral regime, and at the GATT ministerial conference in 1982, trade ministers of several governments appealed for international action to stem the protectionist tide. But the insistent advocacy of the new Reagan administration, which took office in 1981, was the critical force in making the new round a reality.[2]

While the Reagan administration was ideologically well disposed to an open trade policy, it had more pragmatic motives. For one thing, it was concerned about the effects of protectionist pressures at home and abroad on existing trade relations. Bill Brock, then U.S. trade representative, predicted what would happen if multilateral trade negotiations were not initiated: "our business community will be able to accuse us with some justification that we fiddled while the trading system was breaking down around us" (quoted in Preeg 1995, 53). Another motive of the administration was to gain greater market access abroad for present and new export industries. The administration had to deal with a Congress that had become more protectionist in sentiment,

and part of the administration's tactic was to deflect such sentiment into the demand for more open markets abroad. This meshed well with the fact that the interest of the American business community in foreign commerce was broadening; it now went far beyond the issue of access to foreign markets for its exports of manufactures. Thanks partly to deregulation both at home and abroad, major service industries, such as financial services and telecommunications, were also actively searching for opportunities in foreign markets, reinforcing the older export interests composed very largely of industrial corporations. The latter not only had continuing interest in the reduction of barriers to market access but also wanted host countries to impose fewer restrictions on their foreign direct investments and were increasingly disgruntled with foreign disregard of their patents and copyrights. Farmers and farming enterprises also added their weight to the other export interests, since the U.S. administration had come to believe that the time was ripe for an assault on the protectionist agricultural policies of the European Community, Japan, and others. From these interests, the U.S. administration put together a coalition that won it the support of the U.S. Congress.

The idea of launching a new round of trade negotiations met with mixed responses from other countries, ranging from qualified support to active opposition. There was one important exception: Japan was a consistent advocate of a new round and, indeed, was the first country to propose it formally. Japan's motives were quite different from those of the United States, however; its special interest was to strengthen GATT disciplines against the unilateral and arbitrary actions to which it had been and continued to be particularly subject. The European Community, which had failed to recover from the 1981–82 recession as vigorously as the United States, was less enthusiastic. It shared the U.S. interest in reducing various obstacles to trade, including trade in services. But like Japan, it pursued a highly protectionist agricultural policy; and it feared a likely American attack on its Common Agricultural Policy.

Most developing countries, led by Brazil and India, were initially antagonistic to the idea of a new round. They argued that issues outstanding from the Tokyo Round should first be settled.

The most notable issue was the need to curtail the practices of the industrially more established countries in imposing restrictions on market access for those of their manufactures that were proving to be highly competitive. Developing countries also feared that full reciprocity would be demanded of them in trade concessions and that their ability to protect nascent manufacturing or service industries would be reduced, and they resented proposals that would require them to modify their foreign investment laws and intellectual property laws.

Still, once negotiations on launching a new round had begun and as the implications of the various proposals became clearer, countries' perceptions of their own interest shifted, and the outlines of a negotiating agenda emerged. Of particular importance were the shifts in position among the developing countries. To a number of these countries, strongly interested in improving their access to the markets of the industrially more established countries (and susceptible to diplomatic pressures from their developed trading partners), it appeared sensible that they should go beyond the formal position of simply insisting on adherence to past agreements. They saw the dismantling of the Multi-Fiber Agreement, the revision of the safeguard clause, and, more generally, greater adherence to the nondiscriminatory rules as aims for which they would be willing to make reciprocal concessions on such matters as trade barriers, services, and intellectual property. These countries worked together with a group of less dominant countries from the north to become leading players in setting out a compromise agenda for the Uruguay Round. Common interest also cut across the old divide between developed and developing countries on other issues. Most notably, exporters of temperate-climate agricultural products—for example, Argentina, Brazil, Thailand, and Uruguay—made common cause with such countries as Australia, Canada, and the United States in seeking reform of the agricultural policies of the European Community and Japan.

The Uruguay Round was launched in 1986. After four years of talks, negotiations between the European Community and the United States stalled, the principal sticking point being agriculture. Negotiations resumed after some internal reforms were

made by the European Community to its Common Agricultural Policy. Numerous other issues, however, also remained to be resolved, and a comprehensive deal was not reached until 1993. A final signing ceremony was held in Marrakech in April 1994.

RESTORING AND RAISING CONFIDENCE IN THE RULES

Virtually all countries saw a restoration of confidence in the multilateral trade regime to be in their own interest. While the weaker countries, both developed and developing, had the most consistent interest in reasserting GATT disciplines–wanting to rein in the unilateral and arbitrary actions of the most powerful–nearly all countries looked for some improvement, one way or another, in the system of rules. All countries, including the most powerful, were caught up in the dynamic of a rules-based system–that unless the rules are progressively refined and extended to improve their operation, they fall away into disuse. The negotiators' aims, then, were to curtail the disregard of already agreed rules and procedures and to narrow the persisting scope for autonomous and arbitrary action. The endeavor took several forms. It was manifest partly in revision of such specific measures as the dispute settlement machinery, the safeguard clause, customs and related rules, and subsidies and dumping. The most general action, however, took an institutional form through the establishment of the new World Trade Organization.

The New WTO

First proposed by Canada, the creation of the World Trade Organization was, as a broad act, intended to strengthen international respect for and adherence to the rules and procedures of GATT.[3] GATT had been drafted in 1947 as part of the Havana Charter that was to have created a new multilateral trade institution; with the demise of the charter, GATT remained as no more than a provisional agreement. The Canadian view was that formation of a permanent institution to oversee the functioning of GATT and of the related agreements being negotiated in the Uruguay Round would raise the status of the multilateral trade regime and enhance respect for its rules and procedures. For the more powerful, the new institution offered at least one significant advan-

tage. By incorporating all trade and trade-related agreements within a single, overarching, legal framework, it would bring such issues as services and intellectual property rights within the compass of GATT disciplines.[4] The U.S. negotiators were unenthusiastic about the idea; they feared that the U.S. Congress would perceive the new institution as an instrument for the enforcement of multilateral rules that would override the autonomy of a sovereign nation. However, support for the idea came from many other countries, including the European Community, and the United States finally agreed. For the weaker countries, especially the developing countries, there was a price to be paid for a more orderly trading system that helped safeguard them against arbitrary behavior on the part of their more powerful trading partners. They, too, were to be held more rigorously to the trade rules; their infringement of certain rules might no longer be quietly overlooked by the more powerful because of their developing status.[5]

Dispute Settlement Machinery: Making It More Effective

Reform of the existing dispute settlement machinery was likewise closely bound up with the aim of restoring and strengthening adherence to the agreed multilateral rules and procedures. In the arrangement that had been set up under GATT, countries could employ procedural tactics that might indefinitely delay the review of a complaint or frustrate the adoption of a recommendation. This was widely regarded as unsatisfactory, and during the Uruguay Round negotiations, many countries pressed for a reformed and strengthened machinery. The United States, with its traditional emphasis on legal process, had long supported adjudicative procedures for the resolution of disputes (even if it chose to thwart the rulings). Numerous other countries, however, had to overcome their predisposition to regard trade disputes as a matter for diplomatic conciliation between the interested parties. The European Community had been among those preferring this more discretionary approach; it had resisted the use of adjudication within GATT, on the grounds that disputes reflected policy differences and were not matters to be settled legally. But its position shifted radically in the Uruguay Round. One reason for its

change in outlook was the codification of law taking place within the European Community itself as it integrated national commercial practices (see Woolcock 1991, 114). A more immediate reason was the European Community's rising concern about the "aggressive unilateralism" being displayed by the United States. With its increased use of Section 301 in its trade legislation and with the reinforcing of unilateral action in the Trade and Competitiveness Act passed by the U.S. Congress in 1988, the United States was apparently bent on acting unilaterally in passing judgment about whether trade rules had been broken and in deciding whether to take retaliatory action.[6] Thus, it seems fair to say that the American unilateralism of the 1980s provoked other countries into demanding a more legalistic dispute settlement process under GATT.[7]

An improved machinery emerged from the negotiations. Countries making a complaint against a trading partner were assured prompt consideration and an early recommendation; the trading partner could no longer easily frustrate the process. The United States was not required—as the European Community had wanted—to rescind its national legislation authorizing unilateral action, but it accepted that disputes would be adjudicated and settled within the new GATT procedures. Of course, the decision to abide by a recommendation still rested with the individual countries. If a country failed to comply, the most that the WTO Dispute Settlement Body could do was to authorize the complainant to retaliate by withdrawal of a trade concession. As with GATT in the past, the WTO still rested on an expectation on the part of each country about the behavior of others; each member country was willing to abide by its obligations as long as it believed that others would do likewise.

Outlawing Voluntary Restraints

Other steps to strengthen confidence were taken during the Uruguay Round. For numerous countries, one of the worst breaches of the rules-based system was the practice of the powerful—particularly the European Community and the United States—to evade the rules of GATT altogether by resorting to vol-

untary export restraints and orderly marketing agreements. These measures had first emerged as a means of restricting trade in textiles and clothing and had swelled into the Multi-Fiber Arrangement; as I described in chapter 7, their use had later spread to trade in other products. From this practice of evading GATT rules grew a network of discriminatory agreements—varying over time in both country and product coverage—that generally embraced a substantial segment of world trade. The acceptance of a commitment to dismantle these various agreements was a significant achievement of the Uruguay Round. Broadly, existing voluntary export restraints and orderly marketing agreements were to be phased out over three years,[8] though, in the case of the Multi-Fiber Arrangement, the process was spread over ten years.[9] At the same time, the right of countries to protect themselves from disruptive surges of imports continued to be recognized.[10] The safeguard clause that expressed this right was substantially modified in the hope that countries claiming material injury in the future would no longer take action outside the provisions of the WTO. The new safeguard clause nonetheless continued to affirm that any restrictions imposed in response to a surge of imports had to be applied in a nondiscriminatory way. This was an important formal gain for the newer manufacturing exporters of the Third World and for Japan, which had been the main targets of action by the industrially more established countries in curbing imports of specific products. It was disregard of the nondiscrimination principle that made the newer exporters so vulnerable to external pressures.[11]

Other steps taken to strengthen confidence in the regime were largely clarifications and refinements of existing rules and procedures, intended to remove ambiguities or to resolve large differences in interpretation. Their lack of transparency left substantial room for arbitrariness in their administration. They included such matters as import licensing procedures, sanitary and phytosanitary measures, customs valuation, rules of origin, and technical standards (see Preeg 1995, 200–201; Croome 1995). They also included a substantial revision of the subsidy code for nonagricultural products.

Revising Subsidy Rules

The issue of subsidies and their effect on the competitiveness of manufactures had long been a source of international disputes. In particular, the United States had frequently expressed concern about the overt or hidden use of subsidies by Western European countries. At its insistence, the subject of subsidies had been put on the agenda of the Tokyo Round. The agreement that emerged from that round unequivocally recognized the right of countries to defend themselves against export subsidies that caused material injury to their domestic industries. However, the agreement was much vaguer about subsidies that gave domestic industries a price advantage over competing imports. In view of this asymmetry, American concerns about unfair trade were not assuaged. Indeed, during the 1980s, in a milieu when the American trade deficit—especially with Japan—had escalated, many American commentators thought the United States was losing its competitive edge as governments of other countries pursued industrial policies that involved the support and subsidization of new, technologically advanced industries. This only added to the American desire to return to the issue in the Uruguay Round.

A more complete set of rules on subsidies was successfully negotiated during the round. Subsidies were classified into three categories: subsidies that were prohibited outright, subsidies that were permissible, and subsidies that might not be permissible. Prohibited subsidies included all export subsidies. Clearly permissible subsidies included subsidies to finance industrial research and development, to promote regional development, or to finance the adaptation of plants and equipment to meet environmental standards. Other subsidies might not be permissible if they had adverse trade effects—a condition carefully defined. In such a case, the injured country could impose countervailing duties.[12] Thus, countries could initiate complaints against a much wider range of subsidies than had been the case in the past. Easing the way toward this broadening of the understanding about subsidies—in which European and other countries moved significantly closer to the American position—was a general shift toward more market-oriented, less interventionist policies. The

paradigm underlying GATT—that of a freely competitive market—was being translated more fully into the rules.

In sum, the negotiators participating in the Uruguay Round were quite successful in restricting opportunities for governments to take trade actions that appeared arbitrary and unfair to their trading partners but that could nonetheless be claimed not to be inconsistent with the agreed GATT rules and procedures. At least in terms of their formal international commitments, governments were accepting a narrowing down in the scope for unilateral action. Most important, they were depriving themselves of some nontariff instruments that they had formerly often used to provide ad hoc relief to domestic industries complaining of import competition.

The Antidumping Loophole

One major loophole largely escaped the reformers' net: the antidumping code. As part of the defense against unfair trade practices, the national legislation of most of the industrially more established countries had long contained provisions authorizing their governments to impose duties on imported products whenever it was judged that the products were being dumped. (In principle, exports were being dumped if they were being sold at less than "normal value" and were causing material injury to a domestic industry.) GATT had laid down some general rules about dumping and the use of antidumping duties. However, the working definitions of what constituted dumping and the evidence required to substantiate allegations of dumping were largely matters decided by the national legislation and administrative practices of each country. This fact assumed new importance in the 1980s, when antidumping legislation in some developed countries, especially Australia and the United States, was increasingly invoked by industries seeking protection from foreign competition. The looseness in the definitions presented domestic industries and their trade lawyers with the opportunity to exploit the legislation for protectionist purposes.

The Uruguay Round was the third occasion in which international trade negotiators had attempted to devise antidumping

rules less open to abuse. In this round, Japan took the lead, supported by South Korea and Singapore. The rules were modified, but while some conditions were made tighter, others were relaxed. Though many countries favored more rigorous rules, the United States was particularly opposed to substantial amendment. Indeed, the retention of substantial national autonomy in deciding the conditions under which antidumping duties could be imposed was politically so important that a large delegation of leading politicians from the U.S. Congress arrived in Geneva during the negotiations to lobby against major changes. To underline how they felt, senior members of the U.S. Senate threatened to vote against ratification of the final agreement if their position on dumping was not accepted (see Preeg 1995, 170).

THE BROADENING OF THE MULTILATERAL TRADE REGIME

In the seven rounds of multilateral trade negotiations that had taken place under GATT before the Uruguay Round, the primary focus of participants had been on improving market access for trade in manufactures, mostly through reductions in tariffs. Reductions in tariffs and in nontariff barriers on manufactures remained a major part of the agenda in the latest negotiations. (For the developing countries generally, the most significant single issue on this score was the agreement to dismantle the Multi-Fiber Arrangement, mentioned earlier in this chapter.) But what marked the Uruguay Round as a new departure was, first, the extension of its sectoral coverage to include services and agriculture and, second, its inclusion of rules relating to intellectual property rights and foreign direct investment. In these areas of commercial relations, the United States sought major new concessions from other countries. With the outstanding exception of agriculture, the European Community shared the same interest.

Easing Market Access for Service Industries

The aim of improving market access for the service industries had important consequences for the multilateral regime; it took the negotiation of multilaterally agreed rules and procedures beyond the formal barriers imposed at national frontiers, to laws and regulations applying to internal trade. The multilateral regime had

certainly extended its reach into internal laws and regulations in the past; the provisions relating to government procurement negotiated during the Tokyo Round were just such an incursion. Because of the different nature of trade in services, however, the step taken in the Uruguay Round was decisively larger.

What kept foreign suppliers of services from competing in the markets of other countries was not customs barriers (since services were mostly traded internally) but the fact that foreign suppliers did not enjoy national treatment in domestic markets. Major service industries everywhere have operated within a framework of national laws, regulations, and institutional arrangements that have been put in place to protect customers or investors, but these have had the consequence, often not deliberate, of virtually or wholly excluding foreign suppliers. The simplest and most extreme examples are in industries, such as communications and aviation, where the response to monopolistic or oligopolistic conditions in the past has been a degree of state ownership or regulation that impedes the entry of new enterprises, whether domestic or foreign. But there are other, subtler forms of exclusion. For example, in the banking or insurance industries, national concerns over control of monetary policy or the need for prudential supervision have bred regulations that virtually excluded foreign-owned enterprises. To complicate matters further, in drawing up an agreement that covered services as a whole, it was evident that there are different modes of providing services: in some service industries, such as tourism, the consumers move to the place of production; other services, such as accounting services executed over the Internet, entail no presence in the importing country; still other services, such as the services of construction contractors, require the movement of natural persons across borders to provide the service; finally, most major service industries necessitate investing in establishments in the importing country to provide the service.

The negotiation of market access for foreign suppliers of services thus posed problems that were evidently very different from those affecting trade in merchandise. These were largely uncharted waters, and a lot of information gathering and analysis had to be done to identify and define the issues to be negotiated.

The United States initially favored a comprehensive agreement for trade in services that would spell out a set of obligations regarding market access and national treatment and to which relatively few exceptions would be allowed. The European Community and the developing countries, however, were more cautious; they preferred an agreement containing very few general obligations and within whose framework more specific sector-related obligations would be negotiated over time. What finally emerged as the General Agreement on Trade in Services was closer to the latter. Besides some general obligations, it contains specific, negotiated obligations that apply only to those sectors that a country has chosen to identify. The conditions applying to several key sectors–including financial services, telecommunications, aviation, and shipping–were covered by annexes to the agreement. In these sectors, the differences among countries in the concessions they were willing to make or to accept could not be resolved during the Uruguay Round and were left to later negotiations. A principal source of difficulty arose from the reluctance of the United States to accept that the nondiscrimination rule should apply to trade in services.[13] As I will show in chapter 11, this difficulty was later overcome. In brief, the immediate effect of the General Agreement on Trade in Services was limited, but it established a framework for the extension of market access in the future.

Small Steps in Reducing Agricultural Protection

Agriculture was the other major sector to which the United States sought to have GATT disciplines applied. In calling for some liberalization of trade, it was supported by the Cairns Group, a mix of developed and developing countries exporting temperate-climate agricultural products.[14] By so doing, they were challenging the Common Agricultural Policy of the European Community, as well as the policy of Japanese governments, which accorded high levels of protection to their rice farmers. They met with a deep reluctance. Though not unexpected, the opposition to change was, to say the least, perplexing to most outsiders. Large-scale migration from the rural to the urban areas has taken place in the Western European countries and in Japan over the last fifty years

and might have been expected to lessen the strong commitment to agricultural protection. By 1990, employment in agriculture had fallen to 4.2 percent in Germany, to 5.6 percent in France, and to 7.2 percent in Japan—though, in all cases, still remaining higher than in the United States (where it amounted to 2.9 percent of total employment). However, the protection of domestic food production, like the production of clothing, has run tenaciously through the history of most countries (except for the major exporters of these products). It is a policy whose rationale has usually been linked to national security but that seems to have deeper, more obscure roots in domestic political and social life.

The results of the negotiations on agriculture were, at best, limited. One accomplishment was the tariffication of all border measures, a step that could facilitate any future negotiations to reduce levels of protection (although for that reason, countries erred on the side of setting high tariffs). Some agreement was also reached on restricting the subsidization of exports, which was the most pressing American demand. Moreover, a measure of discipline was introduced into the use of domestic agricultural subsidies. Countries committed themselves to reduce over time their measures for domestic agricultural support.[15] But since trade liberalization in agriculture was a one-sided concession by the European Community and Japan (not clearly balanced by reciprocal concessions from the United States or other countries) and since protection was so closely woven into their internal political affairs, it should not be surprising that the extent of the liberalization was modest.

The Inclusion of Intellectual Property Rights

Along with trade in services and agriculture, the Uruguay Round was notable for bringing two other aspects of international commercial relations into the multilateral trade regime: the issues of intellectual property rights and of foreign direct investment. While both had, over many decades, been subjects of international discussion and even some international action, they were mainly matters that had been addressed, if at all, in bilateral treaties.

The issue of intellectual property rights was a particular concern of American and European multinational corporations. It

was nothing new for corporations to see their patents being violated or their copyrighted materials being pirated in countries outside of Western Europe or North America. But as the new wave of information-based technology swept through the world and as other areas of research and development, such as medicine and pharmaceuticals, continued to make extraordinary advances, the flow of intellectual property across borders was increasing dramatically. In this more interrelated world, the assignment of intellectual property rights on a territorial basis appeared increasingly unsatisfactory to the holders. The case of American rights holders was taken up forcefully by the U.S. Congress in its Trade and Competitiveness Act of 1988, which authorized the U.S. administration to retaliate against countries failing to respect American intellectual property rights.

At the international level, governments had long worked through the World Intellectual Property Organization (WIPO)—whose origins dated back a century—to establish rules for different elements of intellectual property. But there was little uniformity in the rules; not all countries subscribed to them; and, most important from the point of view of rights holders, there was no sanction against countries that failed to abide by them.

Developing countries, led by Brazil and India, wanted the issue to remain a matter for WIPO. They were concerned that any new multilateral agreement on intellectual property rights should not impede the transfer to their countries of the technology that was so necessary for their development, and they feared that the licensing, royalty, and other fees that they would have to pay to corporations and individuals in developed countries could constitute a substantial financial burden. Moreover, the linking of intellectual property rights with GATT opened up the possibility of some form of sanctions being applied against countries that chose not to respect foreign-held rights. Nevertheless, the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) was concluded. In effect, the developing countries agreed to TRIPS in exchange for the phasing out of the Multi-Fiber Agreement.

TRIPS defined the intellectual property rights that could be legally protected and the time limits of protection. It required all

member countries to put domestic legislation in place that would uphold the rights defined in the agreement and would enable rights holders to take legal action against any infringement of their rights. This was a pathbreaking step for GATT. In the 1883 Paris Convention, the signatories had agreed to accord foreign-owned intellectual property the same treatment as domestic intellectual property. The new agreement went beyond national treatment to establish common, minimum, international standards to which domestic policies had to conform.

Foreign Direct Investment: Differing Views

The proposal to extend the scope of the multilateral trade regime to include foreign direct investment was another initiative of the industrially more established countries–originating in the first instance with the United States–that met with opposition from the developing countries. There had been a continuing international debate on the status of foreign enterprises in their host countries virtually since the end of the Second World War, and repeated efforts had been made to reach agreement on codes setting out the conduct that both the enterprises and the host governments should follow. The general thrust of the codes proposed by the industrially more established countries had been that foreign investment should not be treated differently from domestically owned enterprises but should enjoy national treatment. However, in considering the treatment of foreign enterprises, the developing countries started out from an entirely different premise. For both nationalist and developmental reasons, their primary objective has been to promote the development of their own productive resources–their own entrepreneurial skills, their own workforce, their own capital and natural resources. This certainly has not excluded the use of foreign capital to advance the modernization of their economies. But it has meant that the ability of these countries to give preference to indigenous productive resources has lain close to the heart of their economic policies.

In the face of these different points of view, negotiations during the Uruguay Round narrowed down to measures affecting foreign direct investment that might be trade distorting and therefore incompatible with GATT. Thus, the Agreement on Trade

Related Investment Measures (TRIMS) dealt with certain practices that only foreign enterprises were required to meet, such as nationally imposed conditions with regard to export performance or the local content of production.

Further Tariff Reductions

Though notable for its broadening of the multilateral regime, the Uruguay Round did not neglect the more familiar task of previous trade negotiations, namely, the reduction of tariffs. It differed from its immediate predecessors, the Tokyo and Kennedy Rounds, in how it approached the task. In the two preceding rounds, substantial headway had been made by an agreement to make across-the-board tariff cuts. This agreement eliminated the detailed bargaining in which mutual concessions had to be matched on an item-by-item basis to satisfy the requirement of reciprocity, and it was particularly welcomed by the smaller countries with less bargaining power. However, in the Uruguay Round, the United States was insistent on employing the older, item-by-item approach, partly to allow more flexibility in protecting sensitive industries, such as textiles. In these circumstances, the ambitious target set for the round–a 30 percent cut in the tariffs of the industrial countries–could have proved difficult to realize. What helped to make substantial progress possible was the introduction of the idea of zero-for-zero tariffs to cover trade in particular, agreed sectors. In eight major sectors, including pharmaceuticals and agricultural machinery, import duties were eliminated, and zero tariffs were introduced. The proportion of nonagricultural imports into the industrially more established countries subject to zero duty rose from 20 to 44 percent. Overall, these countries cut their tariffs by 40 percent on a trade-weighted basis, and the developing countries reduced theirs by about 20 percent. The developing countries also undertook substantial tariffication of nontariff barriers and bound a much larger proportion of their tariffs (see Preeg 1995, 191).

A GENERAL APPRAISAL

The Uruguay Round differed from its predecessors both in the much wider range of issues that were negotiated and in the par-

ticipation of the developing countries as a significant negotiating group. All the major countries or groups of countries gained from others some concessions that they wanted. The developing countries won agreement that the Multi-Fiber Agreement would be gradually dismantled and, more generally, that the industrially more established countries would submit to more rigorous discipline their use of quantitative restrictions for protectionist purposes. The industrially more established countries gained the prospect of improved access for their service industries, greater protection for their intellectual property rights, and lowered barriers on merchandise trade. They went furthest in trade with each other, reducing tariffs for some industries to zero and substantially opening up most, if not all, their markets for service industries. They also clarified rules on subsidies that had been a source of disputes. However, the United States and the countries that comprised the Cairns Group did not obtain the concession on agriculture that they had hoped for, and many developing countries felt that they had been pressured into making more concessions than were justified by the benefits they had won.

A characteristic of the round was that it moved away from negotiations based largely on a narrow balancing of mutual concessions. The changes that were proposed or asked for were too diverse–and often too general in their effects–to allow any such careful balancing. At the end of the negotiations, countries were faced with a package of measures arising from some concessions received from others and some granted to others, which they had to accept or reject as a whole. Certainly, within their own confines, the bargaining in several areas conformed to the familiar pattern; on tariffs, for instance, reciprocity based on the idea of equivalence was the basis for negotiations among participants of comparable economic power. But the concessions made and received in the different areas were linked, and their combined net benefit determined the acceptability of the overall package. Market-opening measures were weighed together with the rules-enhancing measures that made for a more orderly and predictable trade regime. For many medium-size or poorer countries lacking the political or economic power of the leading trading nations, the prospect that all nations would adhere more closely

to the multilateral trade rules and would refrain from the arbitrary use of their power was a valuable benefit.

The Uruguay Round initiated a new phase in the trend toward more open markets that had spread through much of the world. The lowering of barriers to foreign competition was extended from merchandise trade in industrial products to major service industries and, much more tentatively, to agricultural products from temperate climates, and a new discipline on intellectual property rights and some relaxations of restrictions on foreign direct investment were included in the package. Among the industrially more established countries, the round was another step in the cumulative reduction—proceeding since the end of the Second World War—of barriers to the free movement of goods and services and of capital. For many developing countries, it marked a relatively new development in the linking of their markets to the world economy.[16] However, whereas the round obviously facilitated the development of a global market economy, centered on the United States and Western Europe, it was far from ushering in a world where goods, services, and capital could flow freely across national frontiers. Even after the changes introduced by the Uruguay Round were fully implemented, governments generally still had ample means at their disposal to restrain foreign competition in many segments of their domestic markets, and national sentiment was everywhere strong enough to insist, from time to time, on the use of these means to accord protection from foreign competition for particular industries, whether to appease sectional interests or for broader reasons of national well-being. Developing countries retained more extensive means, since they were mostly persuaded that some protection of domestic enterprises from foreign competition was a necessary condition of national development.

For the developing countries, the Uruguay Round was a new departure in multilateral trade negotiations. The developing countries no longer insisted on nonreciprocity as part of the special and differential treatment that they had long sought; they came to accept that the principle of reciprocity in the reduction of trade barriers was a condition of market access. Moreover, their obligation to abide by the multilateral rules substantially in-

creased, since the codes that had been negotiated among the industrially more established countries in the Tokyo Round became generally applicable under the WTO agreement. The developing countries did, however, retain the "differential and more favorable " treatment that they had enjoyed in the application of a number of other GATT clauses, and with some success, they sought comparable flexibility in the application of new WTO clauses.[17]

The strengthening and extension of the rules of trade conduct was a notable outcome of the round. Formally, the round narrowed down the room for maneuver that countries, particularly the powerful countries, had for evading or sidestepping the agreed multilateral rules. Just this restriction on unilateral action had caused the U.S. negotiators to insist on leaving governments with a large measure of discretion in how they interpreted the antidumping rule; this remained the major route through which relief could be afforded to individual industries for politically expedient reasons. It was also the major reason why some members of the European Union emphasized at the end of the round the need for the Union to revise and strengthen its own antidumping laws. (As a later response to these positions, a number of developing countries introduced antidumping legislation into their own trade laws.)

If the scope for independent, unilateral action was formally narrowed by the Uruguay Round, this did not necessarily mean that the trade conduct of individual countries, particularly that of the most powerful countries, was increasingly going to conform to the multilaterally agreed set of rules. At the core of the multilateral regime has always been the idea of nondiscrimination–that in trading relations with others, each country treats all of its trading partners in identically the same way. This idea has differentiated multilateral agreements from regional or bilateral agreements and has insulated commercial relations from the kinds of arbitrary political intervention that raise the business risks for foreign trade and investment. The economically most powerful countries have by no means always been convinced that adherence to nondiscrimination best advances their own commercial interests, and throughout the modern history of trade coopera-

tion, they have repeatedly departed from its observance. The Uruguay Round had considerable success in closing doors to de facto discrimination, but the course of events during the round left doubts about the strength of the commitment to a nondiscriminatory multilateral system. Though eager to include trade in services within the multilateral regime, the United States had not wanted to apply the most-favored-nation rule to its concessions. The European Union was likewise insistent that the new safeguard rule should still allow discrimination in certain circumstances. Outside the Uruguay Round negotiations, both the European Union and the United States had become much more active in proposing or concluding regional and bilateral free trade agreements. As I shall discuss in chapter 10, while these were not necessarily discriminatory in intent, they were so in effect.[18]

In sum, while the Uruguay Round formally strengthened the multilateral regime in several ways, its central role in shaping the trade conduct of nations remained fragile. Respect for the norms of the regime rested on how the powerful countries saw their own interest, and that perspective was prone to reinterpretation in changing political and economic circumstances.